

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO INDUSTRIES, INC.,

08CV2755

Plaintiff,

vs.

June 22, 2015

10:00 A.M.

SAP AMERICA, INC., ET AL.,

Volume 6

Defendants.

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE
AND A JURY

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18 Proceedings recorded by mechanical stenography;
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1 MONDAY, JUNE 22, 2015, 10:09 A.M.

2 MR. MILLER: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. MILLER: Next up is Dale Van Leeuwen.

10:09:51 5 He'll be by video. He's being called by Hodell. Your
6 Honor, I want to talk to you in advance. We have the
7 same issue we had with Mr. Lowery. His deposition was
8 taken and repeatedly he offered personal opinions on
9 matters he has no personal knowledge of and I just want
10:10:06 10 to caution counsel, mention to the Court that in advance
11 we're going to be looking for those foundations to be
12 laid or there will be a lot of objections. We will waste
13 a lot of time.

14 THE COURT: Okay.

10:10:16 15 MR. MILLER: Thank you.

16 Number two, we asked counsel for, last week
17 for a list of exhibits they planned on using with
18 Mr. Van Leeuwen. We were provided with that list just a
19 couple of minutes ago.

10:10:27 20 The very first exhibit that's on the list
21 is Exhibit 33. That was the subject of an objection in
22 front of Judge Wells. We objected to the use of Exhibit
23 33, and she sustained that. And it's not an exhibit in
24 the case.

10:10:39 25 THE COURT: What is Exhibit 33?

1 MR. MILLER: It's a set of notes that were
2 taken from a field kick-off meeting, and there's some
3 handwriting on there and there's a reference to no
4 theoretical -- no upper size limit, and
10:10:54 5 there's -- Mr. Van Leeuwen was asked about these notes at
6 his deposition. He wasn't able to properly authenticate
7 the document, wasn't able to properly attribute the
8 statement to any particular speaker and the exhibit was
9 stricken.

10:11:06 10 THE COURT: Whose notes are they?

11 MR. MILLER: They're his notes, but he
12 doesn't -- he was unable to otherwise automate it. It's
13 got hearsay statements in it from people, but it's
14 unclear who they were. It's from a meeting in Las Vegas
10:11:21 15 early in 2004 that he barely remembers to begin with.

16 He also testified, Your Honor, that the
17 reference to no upper size limit wasn't a reference to
18 users in the case. It was instead a reference to there's
19 no rule when you sell B1 about not competing with
10:11:34 20 All-In-One.

21 So it doesn't have to do with the
22 capabilities of B1; it has to do with the internal sales
23 rules about whether somebody who was selling B1 has kind
24 of a hard stop where they have to stop selling B1 and let
10:11:46 25 the All-In-One people take over.

1 Judge Wells considered all of these
2 arguments. They were laid out in writing and our
3 objection was sustained. The exhibit was stricken. I
4 don't even have a copy of it with me.

10:12:01 5 MS. LUARDE: Your Honor, we're happy to
6 withdraw it. That's fine.

7 THE COURT: Okay.

8 MR. MILLER: That was easy.

9 THE COURT: I think we have our guy there.

10:12:11 10 MR. MILLER: Looks like.

11 THE COURT: Okay.

12 MR. MILLER: We also filed a motion, Your
13 Honor, yesterday with respect to Mr. Ashley, and there
14 are a couple of exhibits that are at issue there.

10:12:22 15 I'll let Mr. Star, he's prepared to address
16 the Ashley motion.

17 THE COURT: Let's do that after this is
18 over.

19 MR. MILLER: That's fine.

10:12:29 20 MR. STAR: Fine.

21 THE COURT: We have to break at 11:30.
22 Unfortunately, I have something else I have to do at
23 lunch time so.

24 MS. LUARDE: Okay.

10:12:41 25 THE COURT: Do you think that's ready,

1 Sharon?

2 MS. LUARDE: I think we're all set to go.

3 THE COURT: Do we need Dave up here while
4 we're doing this?

10:12:51 5 THE CLERK: I'll call him.

6 THE COURT: All right.

7 (Jury in)

8 (Proceedings resumed in presence of the
9 jury as follows:)

10:15:00 10 THE COURT: Good morning, ladies and
11 gentlemen.

12 THE JURORS: Good morning.

13 THE COURT: All right. Well, we're
14 starting and we have this remote, we talked about last
10:15:28 15 week I think, and the remote is from the gentleman who is
16 in Chicago.

17 And so it's sort of the modern way. He
18 didn't have to come here. So with that in mind, you may
19 call your next witness.

10:15:42 20 Let me say one thing, we have to stop at
21 11:30 this morning until about 1:45. That's the plan.
22 All right? Just so you know you have a little bit longer
23 lunch. We will still leave at 4:30.

24 A JUROR: Thank you.

10:16:04 25 MR. LAMBERT: Your Honor, the Plaintiff

1 calls Dale Van Leeuwen.

2 THE COURT: Thank you.

3 MR. LAMBERT: We're going to pass out the
4 exhibits that we will be using.

10:16:18 5 The witness is going to be sworn in.

6 THE COURT: Who does it?

7 MR. LAMBERT: I think you do it.

8 THE COURT: Okay. Mr. Van Leeuwen, can you
9 hear me?

10:16:26 10 THE WITNESS: Yes, I can.

11 THE COURT: Would you raise your right hand
12 for me?

13 DALE VAN LEEUWEN

14 of lawful age, a witness called by the PLAINTIFFS,

15 being first duly sworn, was examined

16 and testified as follows:

17 THE COURT: Could you tell us your full
18 name and spell your last name?

19 THE WITNESS: My full name is Dale
10:16:42 20 Van Leeuwen, it's spelled V as in Victor, A-N, space,
21 capital L-E-E-U-W-E-N.

22 THE COURT: Thank you. You can put your
23 hand down.

24 Go ahead. We have about a two-second delay
10:17:01 25 here.

1 MR. LAMBERT: Right.

2 DIRECT EXAMINATION OF DALE VAN LEEUWEN

3 BY MR. LAMBERT:

4 Q. Mr. Van Leeuwen, just so you know there's a
10:17:05 5 few-second delay between your feed and my feed so we'll
6 try not to talk over each other. Is that fair?

7 A. Absolutely, yes.

8 Q. Okay. And just so you know, there's a court
9 reporter present with you in the room?

10:17:17 10 A. Yes.

11 Q. Okay. And just before we move forward, I'm Wes
12 Lambert, I represent the Plaintiff, Hodell-Natco. I took
13 your deposition several years ago. I'm not sure if you
14 recall or not.

10:17:27 15 Do you recall that?

16 A. I -- I do remember the deposition, yes.

17 Q. Okay.

18 And the court reporter has a stack of
19 exhibits that she might show you or ask you to reference
10:17:40 20 as well as your deposition?

21 A. Okay.

22 Q. As well as your deposition transcript if you -- if
23 that becomes needed.

24 A. Okay.

10:17:48 25 Q. Now, sir, you currently work for a company by the

1 name of Dickenson & Associates in Chicago, is that
2 correct?

3 A. That is correct.

4 Q. And Dickenson & Associates is an SAP partner?

10:18:03 5 A. That is correct as well, yes.

6 Q. Dickenson assists in sales and implementation of
7 SAP products?

8 A. Yes.

9 Q. And you're also a former owner and employee of
10:18:17 10 LSi-Lowery Systems, Inc., correct?

11 A. That is correct.

12 Q. And you were involved in the sale of SAP Business
13 One to Hodell-Natco?

14 A. Yes, I was.

10:18:28 15 Q. And you left LSi some time in 2006, correct?

16 A. Yes. That is correct.

17 Q. And after you left LSi, you spoke with at least two
18 SAP employees about the Hodell-Natco implementation, is
19 that correct?

10:18:48 20 A. Yes. That's correct.

21 Q. And those conversations occurred some time in 2009
22 with regard to your work at Fast Rite?

23 A. That's correct.

24 Q. One of the employees that spoke --

10:19:00 25 MR. MILLER: Objection, Your Honor. That's

1 hearsay.

2 THE COURT: The answer may stand.

3 MR. MILLER: I think we're heading to the
4 important part.

10:19:07 5 THE COURT: Well, then you can raise an
6 objection.

7 BY MR. LAMBERT:

8 Q. One of the employees you spoke with was Paul
9 Killingsworth, is that correct?

10:19:15 10 A. That's correct.

11 Q. And the other employee you spoke with was Dan
12 Kraus, is that correct?

13 A. That is also correct, yes.

14 Q. And just to be clear, they were SAP employees at
10:19:26 15 the time you spoke with them?

16 A. I know Paul Killingsworth was. I'm not 100% about
17 Dan Kraus' -- I know he left SAP. I'm not sure exactly
18 what date it was, but I believe he was still employed at
19 SAP.

10:19:42 20 Q. At the time of your conversation in 2009, Dan Kraus
21 to your understanding was still an SAP employee?

22 A. I believe so, yes.

23 Q. Okay.

24 And your conversation with Paul
10:19:53 25 Killingsworth, do you recall -- first of all, Paul

1 Killingsworth and Dan Kraus, do you recall their job
2 titles?

3 A. At that moment, no.

4 I know that Dan Kraus ran the SAP practice
10:20:11 5 for the Business One product line for SAP in -- in North
6 America.

7 Paul Killingsworth was in sales associated
8 with Business One software.

9 Q. Okay. And you spoke to Paul Killingsworth in the
10:20:25 10 context of possibly moving Hodell to All-In-One or A1, is
11 that correct?

12 A. That is correct.

13 Q. And in your conversation with Dan Kraus, Dan Kraus
14 conveyed to you that the SAP Business One installation at
10:20:43 15 Hodell was a failure, correct?

16 MR. MILLER: Objection.

17 THE COURT: Objection sustained.

18 MR. MILLER: Thank you, Your Honor.

19 MR. LAMBERT: Your Honor, may I approach?

10:20:48 20 THE COURT: Say again.

21 MR. LAMBERT: May I approach real quick?

22 THE COURT: Tell me here.

23 MR. LAMBERT: He just testified that Dan
24 Kraus was an SAP employee so it's a statement of a party
10:20:58 25 opponent, an employee of a party opponent.

1 THE COURT: Objection sustained.

2 BY MR. LAMBERT:

3 Q. Mr. Van Leeuwen, prior to joining LSi, you were the
4 sole owner of The IBIS Group, correct?

10:21:17 5 A. That's correct.

6 Q. And for how long were you the owner of The IBIS
7 Group?

8 A. Approximately 10 years.

9 Q. And IBIS was an SAP channel partner, is that
10:21:30 10 correct?

11 A. Yes. That is correct as well, um-hmm.

12 Q. And to become a channel partner, you had to have
13 certain -- meet certain qualifications such as competency
14 and -- competency from a technical perspective, correct?

10:21:47 15 A. Correct.

16 Q. And when you became an SAP channel partner, you
17 were given access to marketing material, is that correct?

18 A. That is correct.

19 Q. And you were given access to an internal
10:22:00 20 partner -- internal portal for partners, is that correct?

21 A. Correct.

22 Q. And technical resources supplied by SAP?

23 MR. MILLER: Your Honor, this is a series
24 of leading questions.

10:22:12 25 THE COURT: Overruled.

1 MR. MILLER: He's basically testifying.

2 A. Correct. Yes.

3 Q. And technical resources supplied by SAP were given
4 to you at that time?

10:22:22 5 A. Correct. Yes.

6 Q. And as an SAP partner, you were expected to
7 leverage a relationship with SAP to sell its product,
8 were you not?

9 A. Yes, I was.

10:22:34 10 Q. And you did, in fact, do that, correct?

11 A. Yes. Correct.

12 Q. And as an SAP partner, you had to report to
13 somebody at SAP?

14 A. Sales activities, et cetera, yes. That's correct.

10:22:52 15 Q. And one of the people you reported to was named Ken
16 Lorenz?

17 A. Correct.

18 Q. And you also had ongoing conversations with Dan
19 Kraus as part of your sales activities, is that correct?

10:23:04 20 A. Correct.

21 Q. And at some point, IBIS was acquired by LSi?

22 A. Correct.

23 Q. And when did that happen?

24 A. I believe it was May, 2004.

10:23:24 25 Q. And LSi was also an SAP partner at the time,

1 correct?

2 A. Correct.

3 MR. MILLER: Objection, Your Honor.

4 THE COURT: Overruled.

10:23:36 5 Q. And when LSi acquired IBIS, LSi and IBIS became one
6 and the same to your understanding, correct?

7 MR. MILLER: Objection, Your Honor.

8 Legal --

9 A. Correct.

10:23:46 10 THE COURT: Objection sustained.

11 MR. MILLER: Thank you.

12 BY MR. LAMBERT:

13 Q. What happened when LSi acquired IBIS, can you
14 explain that for the jury?

10:23:55 15 A. So I assigned 100% ownership of IBIS to Dan Kraus
16 of -- I'm sorry, Dan Lowery of LSi.

17 I received a sum of money and I also
18 received five percent shares of the joint companies.

19 Q. And just backing up for a minute, you were -- you
10:24:22 20 testified you were personally involved in selling
21 Business One to Hodell, is that correct?

22 A. That is correct.

23 Q. And at the time that you were representing Business
24 One and selling Business One to Hodell, it was your
10:24:38 25 understanding that you were making those representations

1 and undertaking that activity on behalf of both LSi and
2 IBIS, is that correct?

3 MR. MILLER: Objection, Your Honor.

4 THE COURT: Objection sustained.

10:24:47 5 MR. MILLER: Thank you.

6 BY MR. LAMBERT:

7 Q. When you were selling Business One to Hodell, who
8 is it your understanding that you were selling it on
9 behalf of?

10:25:06 10 A. So being a channel partner, we were representing
11 SAP, and I was employed at LSi, so I was -- I was selling
12 for LSi.

13 Q. Prior to working for LSi, you had worked with
14 Hodell-Natco, is that correct?

10:25:29 15 A. That's correct, for many years.

16 Q. You worked with Hodell with regard to its FACTS
17 system?

18 A. That is correct.

19 Q. In fact, you were -- you worked with the company
10:25:39 20 that installed FACTS at Hodell?

21 A. That is correct.

22 Q. And you were the project manager for that
23 implementation?

24 A. Yes, I was.

10:25:48 25 Q. That was some time in the 1990s?

1 A. I did not get that audio.

2 Q. That was some time in the 1990s that you performed
3 that installation at Hodell?

4 A. Yes. Yes, it was.

10:26:03 5 Q. And then you continued to work with Hodell for
6 several years after that, correct?

7 A. Yeah. I worked -- the company that I worked for
8 that ultimately sold Hodell-Natco was a company by the
9 name of Soft Tech. They went out of business 2004 -- I'm
10:26:25 10 sorry -- '94, and I continued a relationship with Hodell
11 from '94 through the acquisition of Business One.

12 Q. And was that -- after your employer went out of
13 business, you formed IBIS, correct?

14 A. That's correct.

10:26:50 15 Q. And you continued --

16 A. And just for the -- just for the record, IBIS was a
17 d/b/a. It was actually the Integrated Business Solutions
18 Group, just so you're -- it's on record.

19 That was actually the corporate name was
10:27:05 20 the Integrated Business Solutions Group.

21 Q. Prior to it being acquired by LSi, correct?

22 A. That's correct. Yes.

23 Q. And in your work with IBIS, you became familiar
24 with Hodell's software needs and its expectations with
10:27:28 25 regard to that software, correct?

1 A. That is correct.

2 Q. And in particular with regard to its ERP software
3 system?

4 A. Yes. That's correct.

10:27:37 5 The -- The IBIS Group or the Integrated
6 Business Solution Group, we focused on companies
7 specifically in the fastener industry and had -- had very
8 deep knowledge in regards to the industry as well as
9 Hodell-Natco. That is correct.

10:27:56 10 Q. You knew how Hodell's orders were processed and
11 shipped?

12 A. Yes.

13 Q. And you knew Hodell's future growth plans,
14 particularly through acquisitions, is that correct?

10:28:10 15 A. That is correct.

16 Q. And these things were communicated to you by Otto
17 Reidl?

18 A. That is also correct, yes.

19 Q. Going to the sale of SAP Business One to Hodell,
10:28:34 20 again you sold Business One to Hodell as a channel
21 partner for SAP, is that correct?

22 MR. MILLER: Objection, Your Honor.

23 THE COURT: Objection sustained.

24 BY MR. LAMBERT:

10:28:43 25 Q. Again, would you state for the jury when you sold

1 Business One to Hodell, in what capacity were you acting
2 and who were you working for?

3 MR. MILLER: We're retreading the same
4 area.

10:28:54 5 THE COURT: Objection sustained.

6 BY MR. LAMBERT:

7 Q. Do you recall when the sale of Business One to
8 Hodell occurred?

9 A. I want to say it was 2000 -- 2005.

10:29:12 10 Q. Did the sale involve the execution of a development
11 agreement?

12 A. Yes, it did.

13 Q. And you acknowledge that Hodell was relying upon
14 LSi's assessment of the Business One product in
10:29:35 15 determining whether to buy it?

16 MR. MILLER: Objection, Your Honor.

17 THE COURT: Objection sustained.

18 MR. MILLER: It would be much easier if
19 counsel just asked him what happened.

10:29:43 20 THE COURT: It would be.

21 BY MR. LAMBERT:

22 Q. Can you -- can you describe the process by which
23 Hodell purchased Business One for the jury?

24 A. Certainly.

10:29:55 25 So again, I was -- I was supporting the

1 FACTS application, which was developed by a company by
2 the name of Software Solutions, ultimately changed their
3 name to Aperum. They were acquired by INFOR as an
4 organization, and that application exists today.

10:30:17 5 Hodell-Natco, because of their acquisition
6 and growth plans and conversations I had with Otto, it
7 became very clear that they needed to expand past the
8 current FACTS application. I was looking at other INFOR
9 products such as Take Stock, et cetera.

10:30:41 10 Hodell-Natco was actually approached by
11 American Express and introduced to the business -- the
12 SAP Business One application through American Express.

13 Otto called me up and said, you know, "This
14 is a product you should look at as an organization."

10:31:04 15 I set up a series of appointments with SAP,
16 flew down to, I believe Atlanta, met with Dan Kraus, Ralf
17 Mehnert, Ken Lorenz. We went through a series of
18 conversations in regards to capability of the
19 application. We talked about Hodell-Natco specifically,
10:31:33 20 their requirements, et cetera.

21 We decided as an organization to take on
22 the product line, SAP Business One. We -- at that point,
23 American Express was still engaged with Hodell-Natco in
24 regards to an acquisition, but it became clear that the
10:31:59 25 Business One application was going to require some

1 intellectual product or knowledge applied to it to make
2 it fastener-industry specific, and American Express did
3 not have the capacity to do that.

4 So at that point, the sale cycle shifted to
10:32:22 5 The IBIS Group engaging with Hodell-Natco to sell them
6 the Business One product.

7 Q. Were you aware of -- did you become aware of
8 Hodell's needs with respect to its current user count and
9 anticipated user count for the SAP Business One software,
10:32:44 10 if it were to purchase it?

11 A. Oh, yeah. Well in advance of, you know, while I
12 was still focused on FACTS, Hodell-Natco, through
13 acquisition, continued to grow its user counts and really
14 had taken the FACTS application to its capacity.

10:33:07 15 So Otto and I had many strategy
16 conversations in regards to where Hodell-Natco was going
17 with the application, so forth, and so I knew that their
18 expectation was well over, you know, 300, 400 users.

19 And it was part of the conversation that I
10:33:28 20 had with Dan Kraus, Ralf Mehnert and Ken Lorenz when I
21 met them down in Atlanta.

22 Q. And did you do anything to investigate or determine
23 whether the SAP Business One product could support
24 Hodell's anticipated user count?

10:33:46 25 A. Yeah, we wouldn't have moved forward without a

1 clear understanding and some due diligence around whether
2 or not it could support it. So there was, again,
3 conversations with those three gentlemen in particular.

4 They all agreed that the application could
10:34:10 5 support, you know, that user count, the three to 400-user
6 range; that it was running in Europe with over 300 users.

7 And they also provided a marketing, piece
8 of marketing material which showed that the application
9 would support that.

10:34:31 10 Q. And who was the publisher of that marketing
11 material you referenced?

12 A. SAP.

13 Q. And what did the marketing material that you just
14 referenced say about the capacity, the user capacity?

10:34:45 15 A. That it could --

16 MR. MILLER: Objection, Your Honor.

17 A. That it could support over 300 users.

18 THE COURT: Do we know what we're talking
19 about?

10:34:55 20 MR. LAMBERT: I'm sorry, Your Honor.

21 THE COURT: Do we know what we're talking
22 about? Is there some document or something?

23 MR. LAMBERT: I'm going to show it to him
24 in a minute. He just said he saw marketing material by
10:35:01 25 SAP.

1 THE COURT: Show it to him and see if he
2 can identify it.

3 BY MR. LAMBERT:

4 Q. We'll get to the marketing material in a minute,
10:35:07 5 but it's your testimony that you did see marketing
6 material discussing the capacity of the system?

7 A. That is correct. Yes.

8 Q. Did you become aware of whether SAP was interested
9 in getting into certain vertical markets with respect to
10:35:23 10 the Business One software?

11 A. Absolutely. Yes. They were very, very focused on
12 what we were doing in vertical markets. We actually
13 co-sponsored a trade show out in Las Vegas, the National
14 Fastener Distributor Association.

10:35:46 15 Q. And who is "we," when you say "we co-sponsored"?

16 A. SAP, and I believe at that point it was Lowery
17 Systems.

18 Q. Co-sponsored a trade show relating to the fastener
19 industry?

10:36:03 20 A. Yeah, it was a matter of attending a trade show,
21 you know, so there was, you know, booth space, you know,
22 typical costs and expenses associated with attending and
23 presenting at a trade show.

24 Q. Do you recall attending an SAP meeting in Las Vegas
10:36:28 25 about the Business One product?

1 A. Yes.

2 Q. Can you tell the jury about that meeting?

3 A. Specifics about it? Yeah.

4 It was SAP, I believe it was a field
10:36:49 5 kick-off meeting, you know, promoting SAP Business One.

6 Again further, you know, just conversations
7 with -- with the Business One leadership team, Dan Kraus,
8 Ralf was there, Chris Robinson was there. He was
9 our -- our PAM, Partner Account Manager. Luke -- Ken
10:37:16 10 Lorenz was there as well.

11 Q. And were any discussions had at that meeting about
12 the capacity of the Business One product?

13 A. Yeah, it was -- it was further discussed, you know,
14 just that these are counts and so forth, and that they
10:37:33 15 made sense for Hodell-Natco.

16 Q. And specifically, Hodell's planned growth to 300
17 users?

18 MR. MILLER: Objection, Your Honor.

19 THE COURT: Overruled.

10:37:45 20 MR. MILLER: Trying to get some clarity.

21 BY MR. LAMBERT:

22 Q. Did you hear my question?

23 A. Could you ask it again? I'm sorry.

24 Q. Those conversations specifically included or
10:38:00 25 regarded Hodell's planned growth to 300 users?

1 MR. MILLER: Your Honor, which
2 conversations, with which people?

3 THE COURT: The objection is overruled.

4 A. Yes. Yes, it did. It included that.

10:38:10 5 Q. And were you assured that the Business One product
6 could handle that capacity?

7 A. Yes. Absolutely.

8 Well, and that existed well through the
9 point of sale. You know, Dan Kraus was involved.

10:38:31 10 Everybody knew the users that were being sold. Everybody
11 knew the growth pattern and where they were going with
12 their business.

13 Q. Is it your testimony that Dan Kraus was involved in
14 the sale of Business One to Hodell-Natco?

10:38:44 15 A. Absolutely. Yes.

16 Q. In what way?

17 A. He was directly involved in negotiating the
18 contracts between IBIS/LSi and SAP putting together the
19 necessary end user paperwork for licensing of the
10:39:07 20 product.

21 Q. Was Mr. Kraus involved in helping determine that
22 this was the right solution to fill or to fit Hodell's
23 needs?

24 A. So from that perspective, The IBIS Group, LSi, had
10:39:28 25 historically with the FACTS application taken a core ERP

1 application and utilizing our intellectual knowledge, we
2 developed functionality that was specific to a vertical
3 market.

4 So as it relates to the core foundation and
10:39:49 5 its ability to support the user counts, I would have to
6 say absolutely. Dan Kraus was aware of that. He
7 couldn't have been intimate about the application of
8 industry-specific processes from a matching standpoint.

9 Q. But just --

10:40:11 10 A. That really required LSi and IBIS's intellectual
11 property.

12 Q. But just so everybody is clear, separating
13 In-Flight from Business One, it's your testimony that you
14 were relying upon Dan Kraus and SAP to determine that
10:40:26 15 Business One itself was a fit for Hodell and that it
16 could handle Hodell's capacity, is that correct?

17 MR. MILLER: Objection. Leading.

18 A. That is correct. Yes.

19 THE COURT: Overruled.

10:40:37 20 Q. And based upon everything that you've just
21 testified about and your conversations, you acknowledge
22 that you turned around --

23 A. We lost audio.

24 Q. Can you hear me?

10:40:52 25 A. I can now. Yes. Thanks.

1 Q. So based upon the conversations that we were just
2 discussing, you acknowledge that you turned around and
3 told Hodell and Otto Reidl that Business One could
4 support at least its growth to 300 users, is that
10:41:07 5 correct?

6 A. We -- we confirmed it. Otto was, again, he was
7 already aware of this based on American Express and the
8 conversations that were being had there.

9 I mean, that same marketing material that
10:41:20 10 I'm talking about was presented by American Express as
11 well, so everybody was on board that the application
12 could support the user count.

13 Q. But just so we're clear, you specifically also told
14 Hodell that Business One could support that user count,
10:41:36 15 is that correct?

16 A. That I had confirmed that with SAP, that is
17 correct.

18 Q. And the user count and the capacity of Business One
19 to handle Hodell's user count wasn't just important to
10:41:59 20 Hodell; it was important to you personally, correct?

21 A. That is correct.

22 Q. Can you explain to the jury why that is?

23 A. Well, there's a significant investment that goes
24 into taking a core application and developing it for a
10:42:13 25 specific vertical market.

1 Our intention was -- was to continue to
2 sell the FACTS application for those companies that were
3 smaller, those companies up to, let's say, 75 users, and
4 we were going to take the SAP Business One application
10:42:32 5 for users that were, let's say, 50, so there was some
6 overlap, up to, you know, the 3-to-400-user range.

7 Q. Was it made clear to you by SAP and Mr. Kraus that
8 SAP was looking for as many users on the Business One
9 system as possible?

10:43:04 10 MR. MILLER: Objection, Your Honor.

11 THE COURT: Objection sustained.

12 MR. MILLER: Thank you.

13 BY MR. LAMBERT:

14 Q. Did you go through a discovery period with regard
10:43:10 15 to the potential sale of Business One to Hodell?

16 A. Yes, we did.

17 Q. Can you describe for the jury what a discovery
18 period is?

19 A. A discovery period is where you sit down with the
10:43:29 20 organization, in this case it was Hodell-Natco, talk
21 about processes, talk about requirements, both current
22 and future state.

23 There is a constant balance you have to
24 maintain, in that the current Legacy System may have
10:43:52 25 certain restriction that causes a workaround. You don't

1 bring those things forward. So you spend time working
2 through the to-be state, if you will, and you determine
3 whether or not -- you determine all the company's
4 requirements and current state processes.

10:44:15 5 And then you identify whether or not
6 there's a match with the application that you're looking
7 to deploy.

8 Q. Were there any alarms during this discovery period
9 with regard to whether Business One could support
10:44:29 10 Hodell's user count?

11 A. User count, no. Not at all.

12 Q. Did you attend any SAP training classes with regard
13 to the Business One product?

14 A. I did, yes.

10:44:42 15 Q. Can you describe for the jury what those training
16 classes entailed?

17 A. The training classes were in regards to the
18 application. There was a, what's referred to as an SDK,
19 or software development kit. So we learned the
10:45:03 20 utilization of the software development kit, we learned
21 the application, we learned how to develop queries, et
22 cetera, utilizing the tools of the application.

23 Q. And before I forget, did Hodell make it clear to
24 you that they would not purchase Business One unless it
10:45:24 25 could support their anticipated growth to 300 users?

1 A. Yes. That was very clear.

2 Q. Was that always consistent throughout the sales
3 process of Business One to Hodell?

4 A. Yes.

10:45:43 5 Q. Was Dan Lowery involved at all in the sale effort,
6 in the sales efforts of Business One to Hodell-Natco?

7 A. I believe he may have met with them one time. I
8 mean, the ongoing sales process itself, no.

9 Ultimately, I believe Dan signed the
10:46:09 10 contracts, the ultimate sales contracts that -- just
11 given his title. But actually, I don't even remember
12 that a hundred percent or if I had signed those.

13 Q. Okay.

14 A. But, yeah, I mean, Dan was aware of it. He was not
10:46:23 15 actively involved, but I -- you know, he knew, Dan knew
16 how important this particular opportunity was.

17 Q. I want to get to some of that literature that you
18 were talking about.

19 Can you look at Exhibit 35 in your binder?

10:46:44 20 A. Okay.

21 Q. Is Exhibit 35 the type of document that you were
22 talking about that you reviewed as part of your discovery
23 process with Business One?

24 A. Yes. That's a partner brief, yes.

10:47:08 25 Q. And this is the kind of information you were

1 relying upon when determining whether Business One would
2 be a fit for Hodell?

3 A. This was one of those elements, that is correct.

10:47:22

4 Q. And at the top of that first page, it indicates
5 it's a copyright by SAP AG.

6 Is that accurate?

7 A. That's correct. Yes.

10:47:40

8 Q. If you would turn to, Mr. Van Leeuwen, if you see
9 on the bottom right-hand corner, there's page numbers.
10 It goes 35, 35.2, 35.3.

11 Do you see that?

12 A. Yes. Yes, I do.

13 Q. Can you turn to the 35.4?

14 A. Okay.

10:47:49

15 Q. There's a discussion of scalability.

16 Do you see the word "scalability" there as
17 one of the bullet points? There's enhanced productivity
18 and control and then management.

19 A. Yeah.

10:48:09

20 Q. Inside and scalability. Do you see that?

21 A. Oh, okay. Yes.

22 Q. Can you describe for the jury --

23 A. Sorry, it's a --

10:48:19

24 Q. Can you describe for the jury what scalability
25 means?

1 A. Scalability means it provides the ability to grow.

2 Q. Could you turn to Exhibit 36 in your binder?

3 Exhibit 36 is another type of document
4 that -- another document that you received and relied
10:48:51 5 upon in marketing Business One to Hodell?

6 A. Yes.

7 Q. Is this also an SAP document?

8 A. Yes, it is, a copy of one.

9 Q. Sorry about the copy quality, but if you look down
10:49:11 10 in that, that last paragraph of the document, there's a
11 statement, "Whether you have five employees or 500, this
12 solution helps emerging businesses streamline their
13 operational and managerial processes."

14 Do you see that?

10:49:26 15 A. Yes, I do.

16 Q. Is that statement one of the things you relied upon
17 to determine that Business One could support 500 users?

18 A. Yes, it was, and was consistent with the
19 conversations that I had with -- with people like Dan
10:49:44 20 Kraus and Ralf Mehnert, et cetera, yes.

21 Q. And in your opinion, would it be appropriate to now
22 claim that "employees" is not synonymous with "users" in
23 that statement?

24 MR. MILLER: Objection, Your Honor.

10:49:57 25 THE COURT: Objection sustained.

1 MR. MILLER: Thank you.

2 THE COURT: Objection sustained.

3 BY MR. LAMBERT:

4 Q. Can you turn to Exhibit 38 in your binder?

10:50:16 5 A. Okay.

6 Q. Exhibit 38 is another document provided to you by
7 SAP, is that correct?

8 A. Yeah. I'm not -- I'm not sure if this was a
9 document or screenshot.

10:50:33 10 MR. MILLER: Objection.

11 A. Looks like it says it's a calculator -- oh, report,
12 yeah, so this would have been a document but it is from
13 SAP, yes.

14 Q. It's one of the documents again that you relied
10:50:44 15 upon in assessing the Business One product?

16 MR. MILLER: Your Honor, objection. Can he
17 ask him what it is?

18 THE COURT: Yeah, he should be able to
19 identify what it is first.

10:50:54 20 BY MR. LAMBERT:

21 Q. Can you identify what the document is,
22 Mr. Van Leeuwen?

23 A. This looks like a lead-in page to a document that
24 would have talked about the return on investment by
10:51:08 25 acquiring the SAP Business One application for a company.

1 Q. And did you rely upon any information in this
2 document in assessing the Business One product for
3 Hodel?

4 A. Yes. This, this would have been supporting
10:51:25 5 material to support the purchase of SAP Business One.

6 Q. And is there anything in this document that
7 supports your understanding of the capacity, the
8 user-count capacity for the Business One software?

9 A. Again, it talks about in the first section whether
10:51:49 10 you have five or 500 employees, Business One helps
11 emerging businesses streamline their operation and
12 managerial processes.

13 Q. Again, this document's called an ROI calculator, is
14 that correct?

10:52:05 15 A. That's correct.

16 Q. Okay.

17 A. Stands for "return on investment."

18 Q. Can you describe return on investment as it
19 pertains to the Business One software based upon your
10:52:16 20 review of this document?

21 A. Return on investment would be, you know, you're
22 going to have an acquisition, a purchase associated with
23 the licenses of Business One. You'll have implementation
24 costs, et cetera, and this type of document would support
10:52:37 25 how you're going to obtain a return on investment through

1 efficiencies, for example, through, you know, the
2 potential savings of employee head counts, et cetera.

3 I mean, there's several things that can go
4 into return on investment.

10:53:01 5 Q. And did you market Business One to Hodell on that
6 basis?

7 A. Yes, I would say so. Yes.

8 Q. Did you ever see any marketing literature from SAP
9 where it started to modify the target market for the
10:53:29 10 product?

11 A. I have to be careful. I mean, over the years, yes,
12 I have.

13 During, during the point of time where we
14 were working on the sale to Hodell-Natco, no.

10:53:49 15 Q. But you subsequently did come to learn that the
16 target market for Business One had been reduced?

17 A. Yes. Absolutely.

18 And if -- if I might add, the core
19 application, because I wanted to verify, too, that, you
10:54:10 20 know, it could support this user count, that it wasn't
21 just, you know, somebody's idea.

22 It was my understanding in conversations
23 that I had with people at SAP, Dan Kraus being one of
24 them, that there were -- there were companies in Europe
10:54:27 25 that were operating with this, this type of user count.

1 What did become quite clear is that the application, once
2 we engaged and we started working on it, once we
3 understood really what was the core application, that the
4 system was really built to support a company that is in
10:54:56 5 Europe.

6 And the processes in Europe, even simple
7 things like order-to-cash, are very different, right? So
8 in Europe, they traditionally don't have a warehouse with
9 inventory. They use 3PL, it's a third-party logistics
10:55:18 10 company.

11 So a lot of the processes that need to be
12 there from a U.S. perspective weren't necessarily there.
13 You couldn't even write a check in the application
14 because in Europe, you deal with wire transfer. That's
10:55:33 15 pretty much how people do all their payments, et cetera.

16 So I think the -- I think the application
17 was able to support the users that they were talking
18 about, but not -- not in the U.S. with the processes that
19 are associated with what we deal with here in North
10:56:01 20 America.

21 MR. MILLER: Your Honor, this is the
22 witness's personal opinion. He's not an expert.

23 THE COURT: Yeah, ask him a question,
24 please.

10:56:10 25

1 BY MR. LAMBERT:

2 Q. Did you attend any SAP training classes where the
3 transaction volume Business One could support was
4 discussed?

10:56:28 5 A. I would say yes.

6 Q. Is transaction volume something that could
7 influence the performance of an ERP system?

8 A. Absolutely.

9 Q. Did you do anything to determine whether SAP
10 Business One could support Hodell's transaction volume?

11 A. We did internally as we started the development
12 effort and after it was sold to Hodell-Natco.

13 I think leading to that, we relied on
14 information that was provided by SAP.

10:57:06 15 Q. Did you do anything --

16 A. I mentioned --

17 Q. Go ahead.

18 A. I mentioned a software development kit. You know,
19 there -- there was --

10:57:17 20 MR. MILLER: Your Honor, this is not
21 responsive to the question. It really isn't.

22 THE COURT: Yeah, put a question.

23 A. Sorry.

24 Q. Did you do anything to investigate the capacity
10:57:31 25 testing that SAP had done on the Business One product?

1 A. I mean, I don't remember.

2 I would say no. I relied on what was being
3 reported by SAP.

4 Q. You testified --

10:57:54 5 A. At least through the point of sale.

6 Q. You testified that there were gaps in functionality
7 between what SAP Business One could do and what Hodell
8 needed, is that correct?

9 A. That's correct. Yes.

10:58:05 10 Q. And is that why the In-Flight Enterprise software
11 was developed?

12 A. That is correct.

13 Q. Was In-Flight developed or intended to be used just
14 for Hodell, or was that going to be an industry -- a
10:58:22 15 solution for the industry as a whole?

16 A. Our intention was to develop it, and the
17 development work that was done was done in such a way to
18 not only support Hodell-Natco, but to support other
19 people within the industry.

10:58:42 20 Q. But did SAP indicate to you that they were
21 interested in the In-Flight development?

22 A. Yes.

23 Q. In what way?

24 A. That was really part of their strategy was to have
10:59:00 25 organizations like IBIS/LSi develop, further develop the

1 application specific to vertical markets and become, you
2 know, their -- their lead-in to those industries.

3 Q. Can you turn to Exhibit 71 in your binder?

4 A. Okay. I have it.

10:59:34 5 Q. Exhibit 71 is a series of e-mails that you're
6 copied on, is that correct?

7 A. Yes.

8 Q. Do you recall sending and receiving the e-mails
9 that are reflected on Exhibit 71?

10:59:49 10 A. I'll -- I'll have to read through them real quick
11 to verify.

12 Q. Please do. I want to make sure that we're clear on
13 that.

14 (Pause)?

11:01:01 15 A. Yes, I was -- I was definitely part -- I was
16 definitely copied on these e-mails, yes.

17 Q. Can you explain to the jury what -- the e-mail on
18 Page 71.2, looks like it was the last e-mail in the
19 chain, is that correct?

11:01:20 20 A. I believe --

21 Q. In other words, the e-mail chain starts at the back
22 and works it's way toward the front, right?

23 A. Just based on the time that's on here, I can't say
24 that that's true or not.

11:01:43 25 Q. Well, can you explain to the jury what the e-mail,

1 the first e-mail is on Page 71.2?

2 A. 71.2. So this was an internal e-mail sent to
3 discuss with Dan Lowery and Jon Woodrum just our
4 relationship with American Express that we had been
11:02:16 5 working in good faith on the Hodell-Natco.

6 It talked about the fees associated with
7 signing up as a -- as a Business One reseller. You know,
8 some of the marketing that would take place, et cetera.

9 Q. And going back to the e-mails further back, you
11:02:40 10 were involved in or copied on e-mails between Mr. Lowery
11 and some folks at SAP, is that correct?

12 A. Yes. Yes, it is.

13 Q. And looks like the e-mail, the first e-mail towards
14 the back, it starts on 71.3 and then spills over on to
11:03:12 15 71.4.

16 Do you see that communication?

17 A. Yes.

18 Q. An e-mail from Dan Lowery to Daniel Kraus, July
19 21st, 2004, at 7:01?

11:03:29 20 A. Yes.

21 Q. And then on the next page there's several
22 paragraphs and there's one that starts, "Dale and I have
23 been talking about."

24 Do you see that?

11:03:40 25 A. Starts with, "Dale and I have been talking about."

1 On which page?

2 Q. 71.4.

3 A. Okay. Yes. "Dale and I have been talking."

4 Q. Can you read that paragraph for the jury?

11:03:59 5 A. "Dale and I have been" -- and this is -- this is
6 Dan Lowery writing to Dan Kraus.

7 "Dale and I have been talking about two
8 large close prospects who want us to write our equipment
9 rental and our fastener functionality into SAP. One is
11:04:18 10 currently installed on FACTS and the other is waiting for
11 us to propose the cost and the timeline for ER, equipment
12 rental, on Business One. They are both 150-user deep
13 deals, which would give us two verticals for the SAP
14 Business One product. Personally I feel the verticals
11:04:42 15 are the quickest routes to continue SPO sales."

16 Q. Is one of the 150-user deals referenced in that
17 paragraph Hodell-Natco?

18 A. Yes, it is.

19 Q. And this e-mail is July, 2004, correct?

11:05:05 20 A. That is correct.

21 Q. Prior to Hodell signing the development agreement
22 or any other agreement to purchase Business One?

23 MR. MILLER: Your Honor, objection. The
24 word "Hodell," we've already had this, is not in the
11:05:17 25 document.

1 THE COURT: All right. But you can
2 cross-examine on that.

3 BY MR. LAMBERT:

4 Q. My question was this e-mail was sent prior to
11:05:27 5 Hodelle signing any contract with LSi or with SAP, to your
6 knowledge?

7 A. Yes.

8 Q. And the gentleman that that e-mail was sent to, Dan
9 Kraus, he's one of the individuals that you had spoken
11:05:41 10 with about the capacity of the SAP Business One system?

11 A. Yes. That is true.

12 Q. Ultimately, if you look on 71.3, Dan Kraus responds
13 to Mr. Lowery and copies you?

14 A. Okay. Yes.

11:06:09 15 Q. And he's forwarding on an e-mail from Ralf
16 Mehnert-Meland, correct?

17 A. Yes. Yes.

18 Q. Is there anything significant in
19 Mr. Mehnert-Meland's e-mail that you noticed at the time?

11:06:29 20 A. So his e-mail states that we could ultimately take
21 the application into large accounts, such as Caterpillar
22 and John Deere, which are certainly large enterprise
23 accounts.

24 Q. And was that something that was important to you?

11:06:48 25 A. Yes. Yeah.

1 I mean, to me that reflects very well. I
2 mean, SAP's thought process that the application could
3 scale, using that word "scale," into large enterprise
4 accounts.

11:07:07 5 Q. And then Dan Kraus ultimately replied, "I think we
6 can help you land your current prospects with a promise
7 of a larger SAP relationship for the product."

8 Do you see that statement?

9 A. What page is that on?

11:07:30 10 Q. Same page, the e-mail right above
11 Mr. Mehnert-Meland's e-mail.

12 A. Oh, yeah, okay. Yes.

13 Q. And what did that statement mean to you when you
14 received it?

11:07:41 15 A. All right. You know, it was our intention to -- we
16 were excited with the ability for the application to
17 scale, and if we were to develop on it, to open up new
18 markets for us.

19 Q. And based upon your involvement as an SAP channel
11:08:01 20 partner, did you come to understand that the potential
21 sale of Business One to Hodell was a high profile sale
22 within SAP?

23 A. Yeah.

24 To my knowledge, it was the largest one at
11:08:19 25 the time that was sold. I was even invited to visit

1 Yardley, Pennsylvania at the SAP headquarters and stay,
2 stay on site at some private rooms that they have
3 available, um-hmm.

4 Q. Because of the -- because of the SAP Hodell sale?

11:08:42 5 A. That is correct. Um-hmm.

6 Q. Could you turn to Exhibit 178?

7 MR. MILLER: Your Honor, the
8 witness -- there was an objection with regard to this.

9 MR. LAMBERT: I'm going to ask
11:09:11 10 Mr. Van Leeuwen about -- I acknowledge that he wasn't
11 copied on the e-mail. I'm asking him about the
12 attachment for the e-mail.

13 I'll lay a foundation for it.

14 THE COURT: Go ahead.

11:09:21 15 BY MR. LAMBERT:

16 Q. If you would look at the page in the bottom
17 right-hand corner, it says 178.2.

18 A. Yes.

19 Q. Is this information that you communicated to SAP?
11:09:52 20 I'll ask a better question while you're reading it.

21 Did you participate in the preparation of
22 the document that's reflected on Page 178.2?

23 A. Yes.

24 Q. And did you provide the information that's
11:10:05 25 reflected on 178.2?

1 A. I believe I did send it to SAP.

2 MR. LAMBERT: Your Honor, may I proceed to
3 ask the witness about this document?

4 THE COURT: Go ahead.

11:10:20 5 BY MR. LAMBERT:

6 Q. You reference, there's some various bullet points
7 on this document, is that correct?

8 A. Yes, there are.

9 Q. In fact, there's several categories, business
11:10:36 10 challenge, competition information, organization and
11 size. Do you see those various categories?

12 A. Yes.

13 Q. The second bullet point is under business
14 challenge. It states, "Managing the migration of data
11:10:51 15 from multiple operations during an acquisition."

16 Did I read that correctly?

17 A. That is correct, yes.

18 Q. And you communicated that to SAP?

19 A. Yes.

11:11:04 20 Q. And what's that -- what's your -- what does that
21 mean? Can you explain that for the jury?

22 MR. MILLER: Your Honor, could I have him
23 to lay a foundation?

24 THE COURT: Overruled.

11:11:19 25 A. Do you want me to proceed?

1 Q. Well, let's back up.

2 Do you recall when this document was
3 prepared?

4 A. Exact dates, no. This would have been put together
11:11:38 5 really as kind of a business case, if you will, for
6 Hodell-Natco.

7 It's a -- it's an account profile. That
8 would have been shared with SAP as part of just the, you
9 know, the sales correspondence, et cetera, back and forth
11:11:54 10 between us.

11 Q. Okay. And can you explain for the jury what
12 managing the migration of data for multiple operations
13 during an acquisition means?

14 A. Yeah, so Hodell-Natco had historically had
11:12:10 15 continuous aspirations of acquisition.

16 They -- they had grown their current user
17 count, both holistically and through acquisition, and
18 their intention was to continue to grow through
19 acquisition.

11:12:26 20 As you acquire a company, the application
21 that they're currently running on supports the database
22 and ultimately the data that they've been operating their
23 company on, and as an acquisition takes place, you need
24 to take that, that data, extract it, ultimately transform
11:12:50 25 it and load it up into the new ERP.

1 Q. Under the bullet point, "Industry
2 size -- organization size and industry information," do
3 you see that section?

4 A. Yes.

11:13:02 5 Q. It says, the last bullet point, "Undisclosed but
6 120 SAP Business One users."

7 Those are your words?

8 A. Yes. Yes, they are.

9 Q. And that was accurate when you wrote it?

11:13:16 10 A. I believe it was, yes.

11 Q. And under the --

12 A. I believe that's what they were -- I believe that's
13 what they were licensed for on their FACTS application as
14 well.

11:13:28 15 Q. Under the bullet point, "Why SAP," can you read
16 that for the jury?

17 A. "Why SAP? The reputation and financial resources
18 of SAP, combined with the industry-specific expertise of
19 LSi/IBIS and its In-Flight add-on, made the solution a
11:13:54 20 strategic fit."

21 Q. Thank you.

22 Did you have communications with a
23 gentleman by the name of Geoff Ashley?

24 A. Yes.

11:14:01 25 Q. With regard to the Hodell-Natco sale in particular?

1 A. Yes.

2 Q. What was Mr. Ashley's title?

3 MR. MILLER: Your Honor, when did Mr.
4 Ashley's title change?

11:14:21 5 THE COURT: You can talk about that.

6 Go ahead, he can answer.

7 Q. When you were communicating with Mr. Ashley, what
8 was his role with SAP?

9 A. So he was -- he was heading up -- he worked under
11:14:39 10 Dan Kraus, but he was -- he was operating really as a VP
11 in sales.

12 I think that's about it.

13 Q. VP of sales?

14 A. And I believe that is correct. I can't remember
11:15:00 15 off the top of my head.

16 Q. And just so we're clear, this is for the Business
17 One product, correct?

18 A. That is correct. Yes.

19 At that point in time, that is correct.

11:15:12 20 Q. Was he high up in the Business One channel, to your
21 understanding?

22 MR. MILLER: Objection, Your Honor.
23 Confusing.

24 THE COURT: Objection sustained.

11:15:19 25 MR. MILLER: He just led him.

1 THE COURT: Objection was sustained.

2 Q. Had you known Geoff Ashley prior to becoming
3 involved with SAP?

4 A. Yes, I did.

11:15:30 5 Q. Can you explain that?

6 A. I knew -- yes.

7 He worked at Aperum, which was, as I
8 mentioned earlier, Software Solutions was the original
9 developer of the FACTS application.

11:15:48 10 As they changed their name from Software
11 Solutions to Aperum, Geoff Ashley was on board in part of
12 that. And then ultimately as FACTS was sold to INFOR, I
13 believe at that point, he transitioned away from INFOR
14 and to SAP.

11:16:06 15 Q. To your knowledge, was Mr. Ashley aware of Hodell
16 before becoming involved with SAP?

17 A. Yes.

18 Q. And how would he have been aware of Hodell prior to
19 being involved with SAP?

11:16:19 20 MR. MILLER: Your Honor, Mr. Ashley will be
21 a witness.

22 THE COURT: Overruled.

23 A. That would have been through -- through the
24 relationship with INFOR. I had -- I had mentioned that
11:16:31 25 we were looking at different solutions for Hodell-Natco.

1 One of those included the Take Stock application.

2 Geoff Ashley was certainly part of the team
3 that was looking for solutions for Hodell-Natco at the
4 time.

11:16:47 5 Q. And would he have become aware of Hodell's user
6 count, size, volume, and business processes as part of
7 that?

8 MR. MILLER: Objection.

9 A. Yes.

11:16:57 10 THE COURT: Objection sustained.

11 Q. I want to move on a little further and try to speed
12 this up.

13 After Business One was sold to Hodell, it
14 had to -- Business One and In-Flight had to be tested, is
11:17:13 15 that correct?

16 A. Well, the -- so after the point of sale and -- the
17 first thing that had to happen were designs needed to be
18 built out associated with the intellectual property of
19 In-Flight Enterprise.

11:17:34 20 As that was taking place, we were, you
21 know, establishing our own internal systems for Business
22 One.

23 We ultimately, utilizing the software
24 development kit, started exercising the developed designs
11:17:56 25 into -- into applications. So we started doing the

1 actual development in our in-house systems utilizing the
2 SDK based on the designs that I was producing for
3 In-Flight Enterprise.

4 Q. Did LSi experience any problems with the Business
11:18:18 5 One software during the pre-live testing process?

6 A. There -- there were -- there were definitely
7 performance issues surrounding the utilization of
8 matrixes and tables which was integral to our design.

9 Q. Well, did you attempt to isolate Business One from
11:18:40 10 the In-Flight product to determine where the slowness was
11 coming from?

12 A. We determined that the lack of performance was
13 coming from the pipe. And when I say that, I mean the
14 communication between --

11:19:01 15 MR. MILLER: Objection. No foundation.

16 THE COURT: Objection sustained.

17 MR. MILLER: Thank you, Your Honor.

18 BY MR. LAMBERT:

19 Q. What did you do to investigate what was causing the
11:19:10 20 slowness that you experienced during the testing?

21 A. Initially we worked on it internally. We would
22 enable components through the SDK, then we would turn
23 them off. We would see significant performance hit when
24 we had the software development kit turned on with the
11:19:30 25 developed applications.

1 We then notified SAP. SAP worked with our
2 development team to try to optimize any of the
3 development that was undertaken.

11:19:46

4 Q. Did you try to isolate the In-Flight product from
5 the SAP product as part of this process?

6 A. Yeah. When I talk about --

7 MR. MILLER: Objection.

11:20:03

8 A. -- turning on and off the SDK, that's exactly what
9 it does. It would shut off the In-Flight-developed
10 application because all the development was done
11 utilizing the SDKs.

12 So when we would turn off the developed
13 application, the SDK then performance was as anticipated.
14 When we turned on the SDK, then performance would drop.

11:20:20

15 Q. Is the SDK the same thing as the DI API?

16 MR. MILLER: Objection, Your Honor.

17 THE COURT: Overruled.

18 MR. MILLER: It's leading.

19 THE COURT: Overruled.

11:20:32

20 Q. Do you understand my question?

21 A. Yes.

22 So the DI API is the communication between
23 the SDK, the software development kit, and the core
24 application.

11:20:52

25 Q. If you would turn to 294 in your binder.

1 A. So it is a component of the software development
2 kit, but it is just that, a component. It is not the
3 software development kit in its entirety.

4 Q. Okay. Thank you.

11:21:08 5 Can you turn to 294, Exhibit 294?

6 A. Okay.

7 Q. The e-mails in Exhibit 294, are those e-mails you
8 sent and received?

9 A. Yes, they are.

11:21:47 10 Q. And I want to direct your attention to Page 294.2.
11 There's an e-mail from yourself to Mr. Mehnert-Meland
12 down at the very bottom, and then it spills over on to
13 24.3.

14 A. Okay. Yes.

11:22:02 15 Q. Do you recall sending that e-mail?

16 A. I do.

17 Q. And what's being discussed in that e-mail
18 communication?

19 A. We were providing our current working environment,
11:22:24 20 both from a software perspective as well as from a
21 hardware perspective. We were communicating the size of
22 the database, number of customers and vendors or master
23 data records is what they're referred to, and the
24 performance or the lack thereof that we were seeing.

11:22:52 25 Q. The second paragraph on 294.3, that starts, "To

1 assist you in understanding the environment we are
2 deploying in," do you see that?

3 A. Um-hmm. Yes.

11:23:07

4 Q. Is that in reference to the Hodell-Natco
5 environment?

6 A. No. I believe this is our internal development
7 system.

8 Q. Okay. The database size, though, down in the last
9 section, is that Hodell's database size?

11:23:25

10 A. Yes. Yes, it is.

11 Q. And 150,000 SKUs, that was Hodell's inventory
12 items?

13 MR. MILLER: Objection, Your Honor.

14 A. Number of --

11:23:37

15 THE COURT: Overruled.

16 Q. You can answer.

17 A. Yeah, that was approximately the number of material
18 records in the master data file.

19 Q. And that was accurate?

11:23:47

20 A. The items.

21 Q. And that was accurate?

22 A. Yes. Yes, it was.

23 Q. You said you experienced --

24 MR. MILLER: Your Honor, just to be clear,

11:23:58

25 he doesn't know if it's accurate. You can't ask if

1 somebody else's information is accurate.

2 THE COURT: The objection was overruled.

3 BY MR. LAMBERT:

4 Q. You testified that you experienced slowness or
11:24:11 5 latency issues with the software when it was being
6 tested?

7 A. Yes. That is correct.

8 Q. Did you continue to proceed with the development of
9 In-Flight and the integration of Business One anyway?

11:24:24 10 A. Yes, we did.

11 Q. Why is that?

12 A. Communications with SAP were that they were going
13 to continue to support resolving the issues, and I
14 believe at the time they were working on an upgrade to
11:24:41 15 the software development kit to increase the volume of
16 information that could pass through on the DI API.

17 Q. I just want to be clear on one thing.

18 During -- during the sale process of
19 Business One to Hodell, did anyone at SAP ever
11:25:03 20 communicate to you that Hodell was outside any particular
21 Sweet Spot for the Business One software?

22 A. No.

23 Q. At any point during the sales process of Business
24 One to Hodell, did anyone at SAP ever express any concern
11:25:24 25 or raise a red flag regarding the size of the Hodell

1 deal?

2 A. At which point in time, before or after the sale?

3 Q. Before the sale.

4 A. No. No one did.

11:25:41 5 Q. In fact, it was quite the opposite reaction, wasn't
6 it?

7 MR. MILLER: Objection, Your Honor.

8 THE COURT: Objection sustained.

9 MR. MILLER: Thank you.

11:25:50 10 BY MR. LAMBERT:

11 Q. And during your time and your personal involvement
12 with IBIS and LSi as an SAP partner, was it clearly
13 advertised to you that the Business One software was for
14 customers with 3 to 500 users?

11:26:13 15 MR. MILLER: Objection, Your Honor.

16 THE COURT: Overruled.

17 A. The -- yes, I would say that the application
18 through the entire process and well through after selling
19 Hodell-Natco, it was our intention to develop this for
11:26:37 20 larger companies up to 300, 300 or 500 users.

21 And as stated, you know, you can go after
22 larger enterprise accounts like Caterpillar or John
23 Deere.

24 Q. And based upon your personal involvement with the
11:26:55 25 software, is it your understanding or belief that SAP

1 overrepresented the scalability of this software?

2 MR. MILLER: Objection, Your Honor.

3 THE COURT: Objection sustained.

4 MR. MILLER: Thank you.

11:27:03 5 MR. LAMBERT: Your Honor, I don't have
6 anything further at this time.

7 THE COURT: Say that again.

8 MR. LAMBERT: I don't have anything
9 further.

11:27:10 10 THE COURT: Okay. Thank you.

11 Sorry, Mr. Van Leeuwen, but we're going to
12 have to break now because we have some other matters to
13 attend to.

14 1:30, does that sound okay? Mr. Panigutti,
11:27:22 15 where are you going to meet?

16 A JUROR: L-1.

17 THE COURT: All right. Keep in mind the
18 admonition and appreciate your patience.

19 MR. MILLER: Your Honor, could you instruct
11:27:32 20 the witness 12:30 his time.

21 THE COURT: 12:30 you time,
22 Mr. Van Leeuwen. Is that okay?

23 THE WITNESS: I have appointments at 12:00
24 o'clock. I didn't anticipate this running past this
11:27:44 25 morning.

1 I'll have to make changes.

2 THE COURT: Thank you. Thank you.

3 Okay. We'll see you then.

4 THE WITNESS: You're welcome.

11:27:50 5 THE CLERK: All rise.

6 (Jury out).

7 (Luncheon recess taken).

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1 MONDAY, JUNE 22, 2015, 1:25 P.M.

2 THE COURT: Good afternoon, ladies and
3 gentlemen.

4 You may cross-examine.

13:41:54 5 MR. MILLER: Thank you, Your Honor.

6 We have a preliminary matter. We'd like to
7 approach.

8 MR. STAR: May we approach real quick?

9 THE COURT: Okay.

13:42:03 10 (Side-bar conference had off the record).

11 MR. MILLER: Your Honor, we've handed to
12 the jury the exhibits that we plan on using during this
13 cross-examination.

14 THE COURT: Thank you.

13:46:38 15 MR. MILLER: There may be others, but this
16 is a set --

17 THE COURT: Okay.

18 MR. MILLER: -- that hopefully will save us
19 some back and forth.

13:46:45 20 THE COURT: Thank you.

21 MR. MILLER: May I proceed?

22 THE COURT: Sure.

23 MR. MILLER: Thank you.

24

25

1 CROSS-EXAMINATION OF DALE VAN LEEUWEN

2 BY MR. MILLER:

3 Q. Good afternoon, Mr. Van Leeuwen. How are you?

4 A. Fine. How are you?

13:46:52 5 Q. Okay. I'm a lawyer. My name is Michael Miller,
6 I'm a lawyer for SAP. I have a series of questions for
7 you today.

8 Can you hear me well?

9 A. I can hear you, yes.

13:47:04 10 Q. Looks like there's just a little bit of a lag. So
11 I'll try to let you finish your answer.

12 A. Okay.

13 Q. You let me finish my question. Okay.

14 Let's start with your relationship with
13:47:15 15 Hodell which you covered a little bit on direct
16 examination, but I want to unpack that A little bit to
17 make sure the jury has a full flavor of how far back you
18 go with Hodell and the texture of your relationship.

19 Okay?

13:47:27 20 A. Okay.

21 Q. You used to be at a company called Soft Tech,
22 right?

23 A. That is correct.

24 Q. And Soft Tech sold FACTS software?

13:47:35 25 A. That is correct.

1 Q. All right. And FACTS software is ERP software,
2 right, business management software?

3 A. Before the phrase was coined, yes.

4 Q. So in other words, ERP is a relatively new term,
13:47:50 5 but the nature of the FACTS software was that it was ERP
6 software?

7 A. That is correct.

8 Q. And that's business management software?

9 A. Yes.

13:48:00 10 Q. And one of your FACTS customers back when you were
11 at Soft Tech was Hodell?

12 A. That is correct.

13 Q. And you were, and I think you testified to this on
14 direct, you were the implementation manager for the
13:48:13 15 Hodell implementation of FACTS?

16 A. That is correct.

17 Q. Okay. And this goes all the way back, I didn't
18 quite catch your answer, either to the late 1980s or the
19 early 1990s, right?

13:48:26 20 A. Early 1990s.

21 Q. Okay. And you worked directly with multiple Hodell
22 employees in connection with your role as this
23 implementation manager for the implementation of FACTS,
24 right?

13:48:38 25 A. That's correct.

1 Q. And in particular, you and Otto Reidl worked
2 together on many, many nights on this implementation; you
3 worked very closely with Mr. Otto Reidl, right?

4 A. That is correct.

13:48:51 5 Q. I mean, you had occasions, you testified at your
6 deposition, where the two of you would work through the
7 night, right?

8 A. Yes, we did.

9 Q. Okay. And implementation, of course, is just the
13:49:02 10 beginning of what's a much longer and deeper relationship
11 in connection with someone who had your role and a
12 customer like Hodell, right?

13 A. That's correct.

14 Q. And at the time, you considered yourself to be a
13:49:16 15 partner of Hodell?

16 A. Yes.

17 Q. And you've even called this relationship that was
18 getting started with this implementation going back to
19 the early 1990s, you called it a marriage, right?

13:49:29 20 A. Yes. It very much is.

21 Q. Okay. Because, and let's make sure the jury
22 understands, because once an ERP solution gets installed,
23 once you get married, then you have to support and
24 maintain that solution, right?

13:49:43 25 A. That's correct.

1 Q. All right.

2 And there, of course, it's not just
3 supporting and maintaining the solution; there are also
4 new releases of the software?

13:49:53 5 A. Correct.

6 Q. Right. And then there's just a little bit of a
7 lag, and also the needs sometimes of the company might
8 change over time, and you're involved in that, also?

9 A. That's correct. In the case of Hodell, for
10 example, when they did an acquisition.

11 Q. Exactly. That's what I was going to go to next.

12 Everything I just talked about was true
13 with respect to Hodell; they needed support and
14 maintenance, right?

13:50:21 15 A. Correct.

16 Q. All right. And they had -- and there were new
17 releases of FACTS?

18 A. That's correct.

19 Q. All right.

13:50:28 20 And Hodell, as you mentioned, was acquiring
21 other companies. So their needs changed and you had to
22 deal with that, also?

23 A. That is correct.

24 Q. And you personally were involved in basically all
13:50:39 25 of that?

1 A. Yes, I would say for the most part, yes. Yes.

2 Q. Right. And first, just so we're clear, it started
3 through your employer Soft Tech, right?

4 A. That's correct.

13:50:53 5 Q. And then Soft Tech went out of business?

6 A. That's right.

7 Q. Okay. And then you started IBIS in 1994?

8 A. Correct.

9 Q. And then IBIS kind of picked up where Soft Tech
13:51:06 10 left off. You were kind of picking up stranded Soft Tech
11 customers and Hodell was one of them?

12 A. Yes. That's correct.

13 I think for a short period of time, Hodell
14 was being supported by another company called Ultra Tech
13:51:22 15 in the middle of that, but, yes, ultimately, in fairly
16 short order, I started supporting Hodell-Natco. That's
17 correct.

18 Q. And we can talk about Ultra Tech if you want, but
19 it doesn't change the story that we're talking about,
13:51:35 20 right, which goes back to the early 1990s, you were the
21 implementation manager for FACTS, and then it was an
22 ongoing relationship because of the support and
23 maintenance and all that. Then Soft Tech went out of
24 business and then you eventually took over through IBIS
13:51:51 25 around 1994?

1 A. That's correct.

2 Q. Okay. And during this period of time, obviously
3 you would have become very aware of Hodell's specific
4 business requirements, right?

13:52:03 5 A. Correct.

6 Q. And, in fact, at the time, going back, years back,
7 you know, to 1994 and after that, IBIS was interested in
8 creating what's known as a microvertical, right?

9 A. That is correct.

13:52:19 10 Q. And my microvertical, what you meant to do through
11 IBIS was to serve not just Hodell, but the entire
12 wholesale fastener distribution industry, right?

13 A. That is correct.

14 Q. And just to be clear, we're not just talking about
13:52:37 15 the wholesale distribution industry; we're talking about
16 the wholesale fastener distribution industry, right?

17 A. That's correct.

18 Q. Right. And that's --

19 A. Yes.

13:52:46 20 Q. Just so the jury follows -- sorry, but the fastener
21 industry is things like chains and clips and bolts and
22 nuts and fasteners, right?

23 A. That's correct.

24 Q. Serving not just Hodell but their competitors in
13:53:03 25 that industry, correct?

1 A. Right.

2 Q. So it's clear that leading up to the facts of this
3 case, say starting in 2003 and '4 and '5, you and IBIS
4 were very, very familiar with Hodell and its requirements
13:53:17 5 and the requirements of the wholesale fastener
6 distribution industry, right?

7 A. That is correct.

8 Q. Okay. So let's switch gears a little bit.

9 At some point in 2001, IBIS took on a
13:53:32 10 project for Hodell called eWMS, right?

11 A. Correct.

12 Q. And that stood for electronic, that was kind of the
13 little E, and then it was WMS, warehouse management
14 system?

13:53:46 15 A. Correct.

16 Q. Right. And that involved basically software known
17 as Radio Beacon?

18 A. Well, it was -- it was sold through Software
19 Solution/INFOR, but, yeah, the core application, I
13:54:07 20 believe, came from Radio Beacon. That is correct.

21 Q. And the idea was to take the FACTS ERP software and
22 supplement some of its functionality with Radio Beacon?

23 A. No, not -- it would have been additional
24 functionality that never existed.

13:54:24 25 Q. Yeah, and I didn't mean to suggest that it

1 was -- that it did used to exist. I'm just making sure
2 the jury understands FACTS provides certain
3 functionalities, obviously, right?

4 A. Correct.

13:54:34 5 Q. And the idea was Radio Beacon provides some
6 different functionalities, right?

7 A. That is correct.

8 Q. And the idea back in 2001 was to merge FACTS and
9 Radio Beacon so that Hodel1 would get the benefit of all
13:54:49 10 the functions from FACTS and all the functions from Radio
11 Beacon all in one package?

12 A. That's correct.

13 Q. Okay.

14 But you had big problems merging those
13:55:00 15 products together, didn't you?

16 A. We were -- we were a very early adopter of eWMS
17 that was sold by Software Solutions and without a doubt,
18 there were interface issues that were -- when the
19 application was provided by Software Solutions, the full
13:55:21 20 integration did not exist.

21 Q. Just to be clear, this project where you were
22 merging the functionalities of FACTS together with the
23 functionalities from Radio Beacon, that was a project
24 that IBIS was responsible for?

13:55:36 25 A. I just sold the application. That is 100% correct.

1 Q. And you were the lead contact, your role at IBIS
2 and you started it in 1994, right?

3 A. Correct. Yes.

4 Q. And you were the sole owner?

13:55:50 5 A. That is correct.

6 Q. And what was your title, say, circa 2001?

7 A. CEO.

8 Q. Okay. So you were the founder, sole owner, and CEO
9 in 2001 in connection with IBIS?

13:56:05 10 A. That is correct.

11 Q. Okay. And IBIS had this agreement with Hodell to
12 merge FACTS and Radio Beacon and there were problems in
13 connection with that project, right?

14 A. That -- that is correct. Those problems,
13:56:21 15 however --

16 Q. Well, and you were the lead contact between IBIS on
17 the one hand and Hodell on the other hand, right?

18 A. Correct.

19 Q. Okay. Take a look, please, at Exhibit 195. I have
13:56:31 20 a colleague there with you in Chicago or at least I
21 certainly hope I do, and she's got a binder of documents.
22 I'd like to go over several of these.

23 For ease of reference, there's some
24 highlighting on the documents because otherwise we'd be
13:56:45 25 spending half the afternoon kind of going from

1 page-to-page, but I want to start with, let me just be
2 clear, the highlights is not in the originals. It's for
3 emphasis today. To 195, do you see that there?

4 A. Yep.

13:56:58 5 Q. Okay. You would agree, this is a January 24th,
6 2001, letter to you from Otto Reidl?

7 Do you see his signature on the second page
8 there?

9 A. Yes.

13:57:13 10 Q. And --

11 A. Actually there is no signature. There is no
12 signature on the second page.

13 Q. Thank you. But you see his name on the second page
14 above the word "President, Hodell-Natco Industries"?

13:57:24 15 A. I do. Yes.

16 Q. Okay. And you would agree with me this letter, the
17 subject matter of it, is the fact, is the eWMS project
18 where FACTS and Radio Beacon were being merged together,
19 right?

13:57:35 20 A. That's correct.

21 Q. And he reports to you in the highlighted section
22 about midway down the first page, "The implementation was
23 undertaken with very little preparatory work but instead
24 was on a modify-as-you-go basis."

13:57:49 25 Do you see that there?

1 A. I do.

2 Q. And that's what Mr. Reidl reported to you on
3 January 24th, 2001 in connection with this project?

4 A. Yes.

13:57:58 5 Q. And then if you turn to the second page, he further
6 reported to you, "If the product could not provide the
7 capabilities required, all of the parties selling Radio
8 Beacon as a FACTS integrated warehouse management system
9 had an obligation to say so. They did not!"

13:58:13 10 Do you see that there?

11 A. Yes, I do.

12 Q. And likewise, Mr. Otto Reidl was reporting this to
13 you in connection with this project on this date, January
14 24th, 2001?

13:58:26 15 A. Yes.

16 Q. And then further down highlighted it reads, "I'm
17 not going to belabor the point of the drop in customer
18 service and lost business in this letter. That issue is
19 reserved in the event I need to seek legal advice."

13:58:39 20 Do you see that there?

21 A. I do.

22 Q. And again this is what Mr. Otto Reidl, the
23 president of Hodell, was reporting to you all the way
24 back in January of 2001 in connection with this eWMS
13:58:47 25 project, right?

1 A. That's correct.

2 Q. Hodell was not happy with IBIS, was it, at that
3 point in time?

13:58:59

4 A. I don't think that Hodell-Natco had any issue with
5 IBIS directly.

6 Q. Okay. Well, then let's look at 311. 311, sir. Do
7 you see that there?

8 A. Yep.

13:59:18

9 Q. 311, if you go to the second e-mail, in other words
10 skipping the top e-mail and going to the earlier one in
11 the chronology, is a July 11th, 2003 letter, this time
12 from Kevin Reidl to you.

13 Do you see that there at the top? It's
14 highlighted?

13:59:30

15 A. I do.

16 Q. Okay. And this again is in connection with this
17 FACTS/Radio Beacon project, right?

18 A. I would assume so, yes.

13:59:44

19 Q. Okay. Well, you can see right there in the first
20 sentence, right, "In an effort to clearly communicate my
21 concerns with you regarding eWMS and The IBIS Group in
22 general," correct?

23 A. Yes.

13:59:54

24 Q. So if there was any doubt about the prior letter,
25 it's now clear the complaints of Hodell are about IBIS,

1 correct?

2 A. No.

3 Q. Okay. Well, then look at the next highlighted
4 section, sir.

14:00:04 5 About midway down the page.

6 A. I will absolutely -- I will absolutely state --

7 Q. Forgive me, sir.

8 MR. MILLER: Your Honor.

9 A. We are taking responsibility.

14:00:14 10 Q. Sir, I have no pending question.

11 A. We took responsibility.

12 Q. You're going to get -- forgive me, and I know it's
13 even harder with the electronics.

14 Here's the process. I ask you questions
14:00:25 15 and you provide me with answers.

16 You had a direct examination where you
17 worked with the Hodell lawyers to tell your story, and
18 other than a series of objections, you just got to tell
19 your story.

14:00:36 20 A. That's --

21 MR. MILLER: Your Honor, I just need an
22 answer to my questions. That's all. I'm just trying to
23 make it clear.

24 THE COURT: Go ahead.

14:00:41 25 Q. You will have an opportunity to explain if you

1 think it necessary, and some of it may be during our
2 exchange.

3 A. Okay.

4 Q. But this is all my turn to ask you questions and
14:00:50 5 get direct answers.

6 Is that fair enough?

7 A. So you let me know when I can tell my side of the
8 story, okay?

9 Q. You had one chance, sir, and you're going to have
14:00:59 10 another. Fair enough?

11 A. Great.

12 Q. Let's go halfway down the highlighted page, okay?

13 Mr. Kevin Reidl is reporting to you here,
14 "Based on the level of attention we received from your
14:01:07 15 organization, how are we to rely on you in the future
16 when we need to keep a larger, more complex software
17 package running smoothly?"

18 Do you see that there?

19 A. Yes.

14:01:19 20 Q. And that's what Mr. Kevin Reidl was reporting to
21 you in July of '03 in connection with this project,
22 right?

23 A. That's correct.

24 Q. And then he continues, literally in the next
14:01:27 25 sentence, "In May, I went to bat for you before my

1 father. He was ready to take legal action, but I
2 proceeded to convince him, with your help, that the
3 project would be completed by June 30th. In the event
4 you couldn't finish everything on your first visit, you
14:01:42 5 were to return within a couple of weeks to complete any
6 open items. That was six plus weeks ago."

7 Do you see that there?

8 A. I do.

9 Q. And if you look a little further down, he says,
14:01:51 10 "Due diligence was never conducted at the start of the
11 project."

12 Do you see that there?

13 A. I do.

14 Q. Fair to say that Kevin Reidl, on behalf of Hodell,
14:02:03 15 was complaining about the level of attention that IBIS
16 gave the project, correct?

17 A. Okay. Yes.

18 Q. And Kevin Reidl was referring to the fact that
19 Hodell or that his father, Otto Reidl, was ready to take
14:02:16 20 legal action back in July of 2003, right?

21 A. Yep.

22 Q. And, of course, it's clear from the last reference
23 that Hodell's complaining to you, complaining to IBIS,
24 about due diligence in connection with the software
14:02:32 25 project, right?

1 A. Correct.

2 Q. Okay. Let's look at 312. It's the next exhibit.

3 If you go to the back of this, it's probably the easiest
4 way to track this, the last page.

14:02:57 5 There's a July 15th, 2003 e-mail from Otto
6 Reidl to you, do you see that there?

7 A. Yep.

8 Q. And if you juggle with the exhibits a little bit,
9 the exchange from 311 was circa July 11th, so this is a
14:03:14 10 couple days after that.

11 Sounds right?

12 A. Yes, it does.

13 Q. Okay.

14 And Otto Reidl reports to you, "Dale, it's
14:03:20 15 been 32 months and counting. The same old story. No
16 eWMS, no FACTS upgraded -- no FACTS upgrade for which we
17 have now waited three years, or other technology in
18 view."

19 Do you see that there?

14:03:36 20 A. I do.

21 Q. And that's what Mr. Otto Reidl was reporting to you
22 in July of '03 in connection with this project, right?

23 A. That is correct.

24 Q. The FACTS/Radio Beacon project?

14:03:45 25 A. Yes.

1 Q. Okay.

2 And if you go to the top of this document,
3 at the bottom of the first page, you can see that you
4 sent a lengthy response and then at the very top, you see
14:04:06 5 there's Otto Reidl kind of replying to your response?

6 Do you see that?

7 A. Are you referring to what we just went over?

8 Q. No. I'm just walking us through the chronology, so
9 again all, the way in the back was Mr. --

14:04:21 10 A. Yes.

11 Q. -- Otto Reidl's initial note to you. And then if
12 you go to the front, at the bottom is your response to
13 Otto, correct?

14 A. Yes. That is correct.

14:04:31 15 Q. And then if you go to the top of the first page,
16 you can see that Otto Reidl replied to your response.

17 A. Yes. That is correct.

18 Q. Okay. And Mr. Otto Reidl, in reply to your
19 response, says to you, and this isn't highlighted so
14:04:45 20 we'll just have to slow down a little bit. In the second
21 sentence, "Our labor cost is up approximately 1.5 cents
22 for every sales dollar in Cleveland over the old, quote,
23 inefficient, quote, paper method for the last two and a
24 half years. That doesn't count the capital and
14:05:03 25 management time costs, nor does it measure the loss of

1 employee confidence in our management technology push."

2 Do you see that there?

3 A. Yes, I do.

14:05:14

4 Q. And again that's what Otto Reidl was reporting to
5 you in connection with this FACTS/Radio Beacon project in
6 July, 2003?

7 A. That's correct.

8 Q. I just want to look at one or two more parts of
9 this.

14:05:22

10 If you look further down in the beginning
11 of the highlighted text, he reported to you, did he not,
12 "A lot of this has to be defined as a lack of presenter,
13 quote, promoter or salesmen, quote, observance of
14 customer requirements versus capabilities of the
15 software."

14:05:36

16 Do you see that there?

17 A. I do.

18 Q. Okay. And finally, he reported to you, "I'm
19 personally convinced that eWMS was promoted well beyond
20 its capabilities and Hodell-Natco has been -- has paid a
21 very dear and costly price for believing in this product
22 and the support promised by Radio Beacon and Aperum's
23 precursor."

14:05:44

24 Do you see that there?

14:06:00

25 A. I do.

1 Q. Okay. Now, we've looked at these three documents,
2 not in every line of them by any stretch, although
3 they'll ultimately be available to the jury, but wouldn't
4 you agree, sir, that it's fair to say at this point in
14:06:12 5 time, in July of 2003, the marriage that existed between
6 Hodell on the one hand and IBIS on the other hand was in
7 trouble?

8 A. No, I would not say that at all.

9 Q. Okay.

14:06:23 10 A. And the reason I'm going to say that, and you've
11 left the opportunity for me to now speak, is that The
12 IBIS Group was a VAR, a value added reseller of this
13 software, this Radio Beacon software and Software
14 Solutions.

14:06:37 15 We relied heavily on both Software
16 Solutions and Radio Beacon to do the discovery process,
17 to support whether or not the application could provide
18 the necessary functionality, and do the implementation.

19 We facilitated, and we will -- The IBIS
14:07:02 20 Group took responsibility to the very best of its
21 ability. We stood beside the customer throughout the
22 entire process. There is no doubt in my mind that
23 Hodell-Natco had a fairly extensive cost associated with
24 the implementation. When he talks about, when he talks
14:07:25 25 about legal action and so forth, at no point is this

1 saying it's directed to The IBIS Group.

2 Q. That's what I thought you might be saying, sir.

3 A. He --

14:07:38

4 Q. Hold on. Your point is, "Oh, all this back and
5 forth, Hodell is not mad at IBIS; they're mad at somebody
6 else," right?

7 A. They were extremely frustrated over the situation
8 at hand. Absolutely.

14:07:48

9 Q. And that frustration, sir, included frustration
10 with IBIS, correct?

11 A. I -- I think -- he relied, Otto relied very
12 heavily --

14:08:03

13 Q. Hold on, sir. If you can't answer that -- sir, if
14 you can't answer that, let's quickly go back to 195,
15 okay? And 195 it says, "The implementation was
16 undertaken with very little preparatory work but instead
17 on a modified-as-you-go basis," right?

18 A. That's correct. And I explained --

19 Q. Excuse me, sir.

14:08:15

20 A. -- who did --

21 Q. Sir, Your Honor, I'd like to ask him a question.

22 You were the implementation manager for
23 this project, correct?

24 A. I oversaw the project. I was not on the ground --

14:08:25

25 Q. Sir.

1 A. -- doing the implementation.

2 Q. Sir, are you changing your testimony?

3 Earlier today I asked you if you were the
4 implementation manager for this FACTS/Radio Beacon
14:08:33 5 project, and you testified that the answer was yes.

6 Correct?

7 A. As an organization --

8 Q. Sir.

9 A. -- that is a hundred percent correct.

14:08:41 10 Q. Sir.

11 A. We took responsibility.

12 Q. I want to be clear. Earlier today, not ten minutes
13 ago, I asked you if you were the implementation --

14 A. I apologize. I misunderstood. I misunderstood
14:08:52 15 your question. I apologize for that.

16 Q. Sir, are you or were you or were you not the
17 implementation manager for the FACTS/Radio Beacon project
18 on behalf of IBIS?

19 A. For IBIS's participation in the project, yes.

14:09:08 20 Q. Okay. Thank you.

21 And when Hodell complains about preparatory
22 work in connection with the implementation in Exhibit
23 195, they're talking about you, right?

24 A. No, they're not.

14:09:22 25 Q. Okay.

1 A. They're talking about --

2 Q. Let's move on.

3 A. You asked me the question. I'm going to give you
4 the answer.

14:09:29 5 Q. You can deny. So you think the marriage that
6 existed between Hodel and IBIS, notwithstanding some of
7 the snippets that we just reviewed and the threats of
8 litigation, was fine?

9 A. It was so fine that it continued on for many years
14:09:45 10 after that.

11 Q. Let's talk about how much it continued, sir.

12 A. It --

13 Q. Do you think, do you think there was a threat of
14 litigation, right, against you in July of 2003, right?

14:09:55 15 A. We would have absolutely been called into, into the
16 litigation, but I -- I don't believe that the litigation
17 would have been against IBIS directly.

18 Q. You don't? Because if you look at 311, in the
19 second highlighted section from the bottom, doesn't Kevin
14:10:13 20 Reidl report to you, "In May, I went to bat for you
21 before my father"?

22 A. We --

23 Q. Excuse me, sir. I get to ask this question. "You"
24 meant you, right?

14:10:26 25 A. It did.

1 Q. And then it continues --

2 A. At that point, he's not talking about litigation.

3 He is talking about --

4 Q. Sir, the very next sentence, does it not read, "He
14:10:38 5 was ready to take legal action."

6 Isn't that what it says? Isn't that what
7 it says?

8 A. It does not say legal action against IBIS.

9 Q. I understand your point. All right. Let's move
14:10:49 10 on.

11 Let's talk about what happened next after
12 these threats of litigation in July of 2003.

13 Your first involvement, I think you
14 testified to this in fact today, with the SAP B1 product
14:11:05 15 was when you received a telephone call from Otto Reidl,
16 correct?

17 A. That is correct.

18 Q. And you say that Otto Reidl had been approached
19 about B1, not by IBIS, but by American Express, right?

14:11:22 20 A. That's correct.

21 Q. And you also agree, you didn't even know about B1
22 until Otto called you to talk about B1?

23 A. That's correct.

24 Q. And AmEx, just to be clear, or just to be clear
14:11:41 25 that AmEx was the first entity to mention B1 to Hodell,

1 AmEx was what's known as the partner of record, isn't
2 that right?

3 A. Yeah, that would be correct.

4 Q. And a partner of record is pretty much in the B1
14:12:00 5 reseller context, an SAP term meant to designate
6 what -- who is the reseller who made the first contact
7 with the customer?

8 A. That's correct.

9 Q. And again, here, just so the record's clear, the
14:12:14 10 partner of record was AmEx, right?

11 A. I think we've established that, yes.

12 Q. Right. And in SAP world, that means they were the
13 first seller to contact Hodell about B1?

14 A. That's correct.

14:12:28 15 Q. Now, this call that you testified about that came
16 in from Otto Reidl, that would have been sometime in
17 2003, right?

18 A. I can't recall a specific date.

19 Q. Well, let's -- let's try this. Can you take a look
14:12:45 20 at Exhibit 32?

21 I'll represent for the record, the exhibit
22 was marked for the purposes of this case, this exhibit
23 was marked for the purposes of this case as Number 32.

24 It's the software development kit contract between IBIS
14:13:15 25 and SAP, and I think if you look at the top of it, you'll

1 see SAP's name and your name, and you'll agree with me
2 that that's what this is?

3 A. That's correct. Yep.

14:13:30 4 Q. Okay. And just so we're following, because I think
5 this will refresh your recollection and we want the jury
6 to understand the chronology here, the title of this is
7 "Limited term SAP Business One Software Development Kit
8 License."

9 Do you see that at the top and then it says
14:13:43 10 Version 2.0?

11 A. I do, yes.

12 Q. Right. And some people refer to these as SDK
13 agreements?

14 A. Correct.

14:13:51 15 Q. Okay. And this says "This agreement's made
16 effective as of," and it's hard to read but I think it
17 says, "31 day of December, 2003."

18 Do you see that there?

19 A. I do.

14:14:02 20 Q. Okay. By and between SAP America, et cetera, et
21 cetera.

22 And then it's handwritten in there "The
23 IBIS Group," right?

24 A. Correct.

14:14:13 25 Q. So if you first heard about B1 from Otto from this

1 telephone conversation -- from a telephone conversation
2 from Otto, then that conversation must have occurred
3 prior to the SDK agreement when you executed an actual
4 contract with SAP relating to B1, right?

14:14:35 5 A. That's correct. Yes.

6 Q. It's not a trick question by any stretch of the
7 imagination. I just want to be clear if you had a SDK at
8 the end of December, 2003, it must have been that the
9 call from Otto came in some earlier time in 2003, is that
14:14:56 10 right?

11 A. Yes, we already said we established that. Yes.

12 Q. Thank you. Thank you.

13 A lot of dates and a lot of documents and I
14 realize you know the history of this maybe fairly well
14:15:06 15 but some of the jurors -- all the jurors, they're new to
16 this, okay?

17 So this call that came in from Otto in 2003
18 would have been sometime after the exchanges that we just
19 looked at in Exhibits 195 and 311 and 312, right?

14:15:24 20 A. That's correct.

21 Q. Okay. And they finished, we just saw, in July of
22 2003, right? The exchanges that we just reviewed?

23 A. Yes.

24 Q. The last one was July 15th.

14:15:35 25 And if the SDK is dated December, 2003,

1 then this call that came in to you from Otto Reidl where
2 you first heard about B1 was sometime between July, 2003
3 and December, 2003?

4 A. That's correct.

14:15:47 5 Q. And Otto, when he called, was very excited about
6 B1, right?

7 A. He was, yes.

8 Q. All right. And you testified today that he told
9 you that this was a product, something like, and I don't
14:16:05 10 want to get your words wrong, but I think I'm pretty
11 close and you can tell me if I'm not, he told you, "Hey,
12 Dale, this is a product that you should look into for
13 your organization"?

14 A. Yes, he did.

14:16:15 15 Q. Would you agree with me that that is a gross
16 understatement of what he actually told you?

17 A. No.

18 Q. Would you agree with me that he actually directed,
19 your word, you as his partner, your word, to drill down
14:16:37 20 on Business One?

21 A. I would say that, yes, he felt that this was a
22 product that we should review and we should consider as
23 part of our portfolio.

24 Q. So in other words, it's not just that he said,
14:16:57 25 "Hey, Dale this is a product you ought to look at," you

1 agree with me that he directed you as his partner to
2 drill down on this product both for yourself and for
3 Hodell?

4 A. That's correct.

14:17:07 5 Q. Okay. And, of course, you went out and did that,
6 right? You went out into the world and followed up on
7 Otto Reidl's request to determine, to investigate
8 Business One, fair enough?

9 A. Yes. I met with SAP people who told me whether the
14:17:26 10 application could perform the specific functions or not.

11 Q. And we're going to unpack that and talk about it in
12 some detail, but I just want to be clear after he
13 directed you as his partner to drill down on B1 and
14 whether it was suitable both for yourself and Hodell, you
14:17:42 15 went out into the world and did that investigation,
16 right?

17 A. Yes, and that was being done along with
18 other investigations.

19 Q. Thank you. I'm going to proceed.

20 A. We were investigating the software as well.

21 MR. MILLER: Your Honor, he answered yes.

22 THE COURT: Please just answer the question
23 he asked you.

24 Q. And you knew that Hodell was relying on your
14:17:57 25 assessment of B1 when it was making its decision on

1 whether to buy B1 or not, right?

2 A. They, there was a parallel effort in place. AmEx
3 was working with them. We were working with AmEx at the
4 time.

14:18:14 5 Q. But you know that Hodell, after directing you as
6 its partner to drill down on B1, and notwithstanding the
7 litigation exchanges or whatever you want to call those
8 that occurred in 2001 and 2003, Hodell was relying on
9 you, right?

14:18:31 10 A. Sure. Yes.

11 Q. And again, notwithstanding what had happened in
12 2011 and -- pardon me -- 2001 and 2003, your point was
13 they still trusted you?

14 A. Yes.

14:18:44 15 Q. And when you did this investigation, just to be
16 clear, you weren't just doing it for Hodell; you were
17 also doing it for yourself, right? IBIS?

18 A. That -- that is correct.

19 Q. Because you were focused on this idea of a
14:19:00 20 microvertical and creating a solution for the wholesale
21 distribution -- wholesale fastener distribution industry,
22 right?

23 A. That is correct.

24 Q. Okay. So let's talk about the project for a
14:19:12 25 moment.

1 You would agree that the solution that was
2 being developed here and that's at issue in this case,
3 it's a complicated multi-component solution?

4 A. That is correct.

14:19:43 5 Q. Right? Just so we're clear, it doesn't just
6 involve B1, right?

7 A. Correct.

8 Q. It also involves an add-on application called Radio
9 Beacon and an add-on application called In-Flight
14:19:43 10 Enterprise, right?

11 A. That's correct.

12 MR. MILLER: Just pause for one second.
13 I'm not sure what that is. There was a noise with the
14 microphone and it was a little bit distracting.

14:19:54 15 BY MR. MILLER:

16 Q. Let's talk about In-Flight.

17 A. Sure.

18 Q. Another word for add-on is extension, right? I
19 think you used that term earlier today, all right?

14:20:05 20 A. Correct.

21 Q. So In-Flight was an add-on or extension depending
22 on what word you want to use, right?

23 A. Correct.

24 Q. And it fills gaps in functionality that it or the
14:20:15 25 other software, B1, wouldn't have, right?

1 A. That is correct.

2 THE COURT: Mr. Miller, are you touching
3 anything there?

4 MR. MILLER: No. I'm not touching it. It
14:20:35 5 almost seems like maybe there's a microphone remotely. I
6 don't know where Mr. Van Leeuwen's microphone is, but I
7 think we can see all these microphones.

8 THE WITNESS: My microphone is about three
9 feet away from me.

14:20:49 10 MR. MILLER: Okay. I'll just keep going.

11 BY MR. MILLER:

12 Q. Again, In-Flight Enterprise, the idea was it would
13 provide functionality that B1 didn't have?

14 A. That is correct.

14:21:01 15 Q. All right. And you had also done an add-on where
16 you were working on FACTS -- I'm sorry, Your Honor.
17 Seems like it's getting worse.

18 THE COURT: Would you call Dave and see if
19 he can fix this noise that's going on here?

14:21:25 20 MR. MILLER: Judge, I'll try and keep
21 going. Okay.

22 BY MR. MILLER:

23 Q. You had done an add-on also for FACTS, correct, and
24 it was called In-Flight?

14:21:38 25 A. That is correct.

1 Q. Okay.

2 But this new In-Flight that was going to be
3 used with Business One was different, correct?

4 A. It was different in that it was on a different
14:21:54 5 technology platform.

6 Q. Well, number one, it had a different name, right?
7 It was called In-Flight Enterprise?

8 A. As I explained earlier --

9 Q. Sir, did it have a different name? Was the new
14:22:05 10 In-Flight called In-Flight Enterprise?

11 A. That is correct. Yes.

12 Q. Okay. And if I call it In-Flight Enterprise, you
13 understand I'm talking about the one associated with B1,
14 correct?

14:22:17 15 A. Yes.

16 Q. Okay. And it required code, software code to be
17 written from scratch, correct?

18 A. That is correct.

19 Q. And it was an untested, complex piece of software
14:22:35 20 that was going to be merged with B1, correct, with this
21 code that's written from scratch?

22 A. If -- if you want to call the SDK provided by SAP a
23 merging, yes.

24 We developed it, utilizing the SAP SDK.

14:22:54 25 Q. Understood. But the code was written by IBIS,

1 correct?

2 A. The code --

3 Q. The code wasn't written by SAP?

4 A. That's correct. It was just audited and performed
14:23:07 5 by -- tested by SAP.

6 Q. Okay. So we want to go slow here. I just want to
7 make sure the jury understands.

8 A. Okay.

9 Q. The code for IFE which stands for In-Flight

14:23:17 10 Enterprise, that was written not by SAP, but instead by
11 IBIS, isn't that right?

12 A. Correct.

13 Q. Okay. I just wanted to be clear.

14 And it was an untested add-on, right, this

14:23:28 15 code being drafted from scratch, so it was obviously
16 untested, correct?

17 A. That's correct.

18 Q. And you, both you and Hodell, were aware that it
19 was untested, correct?

14:23:42 20 A. Correct.

21 Q. And this coding that IBIS was doing for Hodell in
22 connection with IFE, was a huge part of this overall
23 project that involved B1, Radio Beacon and In-Flight,
24 correct?

14:24:03 25 A. So Radio Beacon had their -- had they used the same

1 SDK to do the interface between Radio Beacon and Business
2 One? IBIS had nothing to do with that interface.

3 Q. My question -- and thank you. And I'm not trying
4 to suggest that you did.

14:24:20 5 I'm focusing just on IFE, and my point to
6 you --

7 A. I --

8 Q. Is that the In-Flight Enterprise coding that IBIS
9 did for IFE, right, that was a major part of this
14:24:38 10 project? It's a big piece of work?

11 A. We -- again, we were filling in gaps where Business
12 One couldn't provide functionality.

13 Q. Let's take a look at Exhibit 9, okay? And Exhibit
14 11, we'll look at them together.

14:25:11 15 Exhibit 9 is an October 14th, 2004 letter
16 from you and Dan Lowery to Otto and Kevin.

17 Do you see that there?

18 A. Yes, I do.

19 Q. Okay. And this is basically the cover letter, if
14:25:31 20 you look at Exhibit 11 which is on the next tab, to this
21 attached kind of data sheet, do you see that there? Fair
22 enough?

23 A. Is this the one you're referring to has the date on
24 it or not?

14:25:49 25 Q. I'm going to refer both to Exhibits 9 and 11.

1 A. Okay.

2 Q. I'm just pointing out that Exhibit 9 is an IBIS
3 letter from you and Dan Lowery at IBIS, and it's a
4 proposal?

14:26:02 5 A. That's correct.

6 Q. For this project that we're talking about, right?

7 A. Yes.

8 Q. A Hodell project that will have B1, In-Flight and
9 Radio Beacon, right?

14:26:12 10 A. Correct.

11 Q. And Exhibit 11 is the attachment to Exhibit 9 and
12 it provides additional details in connection with the
13 project?

14 A. Correct.

14:26:23 15 Q. Okay. And it's likewise on IBIS letterhead?

16 A. Yes.

17 Q. And if you look at the second paragraph of Exhibit
18 9, actually why don't we just go right to it, look at the
19 second paragraph of 9, that's fine, and we'll go to 11.

14:26:42 20 THE COURT: Excuse me for a minute.

21 Dave, this was making noise. I don't -- of
22 course, as soon as you come in, it stops.

23 (Discussion had off the record)

24 BY MR. MILLER:

14:27:18 25 Q. You see in the first sentence of the second

1 paragraph, sir, it says "As such, this project timeline
2 defines over 5,000 man hours of work." That's a lot of
3 work, right?

4 A. Yes.

14:27:29 5 Q. Okay. And if you look at 11, it's not the same
6 reference, but it's broken down a little bit.

7 Do you see the highlighted part?

8 A. Yes.

9 Q. Okay. And it says there the purchase of In-Flight
14:27:44 10 Enterprise, and then beneath that, there's a reference to
11 3816 hours. Do you see that there?

12 A. Yes.

13 Q. So you would agree with me back to my original
14 question, that the In-Flight Enterprise component of this
14:27:58 15 solution that you were developing for Hodell, that was a
16 major piece of the solution, the In-Flight Enterprise
17 part?

18 A. Again 5,000 man hours of development is not a lot
19 of time. It's considerable. But I would say there's
14:28:16 20 probably hundreds of thousands of man hours in business
21 All-In-One -- or Business One by comparison, so you get
22 some idea of the volume of programming involved.

23 Q. Got it. So let's make sure the jury understands.

24 Business One, at the time you're sending
14:28:31 25 this note on behalf of IBIS to Hodell, is a product

1 that's already had a lot of time devoted to it, right?

2 A. I assumed that at the time.

3 Q. That's all I mean.

4 A. I assumed that at the time.

14:28:50 5 Q. And I think that's what you were suggesting. SAP
6 had dumped thousands and thousands of hours already in B1
7 at the time you're sending this October 14th letter,
8 correct?

9 A. Sure. Yes. Absolutely.

14:29:00 10 Q. Because B1 is a product in December of -- pardon
11 me -- October of 2014 that was on the proverbial shelf
12 and customers could go and buy it, correct?

13 A. In Europe, that is true.

14 Q. In October of 2004, it was also available in the
14:29:18 15 United States, isn't that right?

16 A. It became available in the United States, that is
17 correct.

18 Q. But this letter is dated October of 2014. I just
19 want to be clear, B1 is available?

14:29:30 20 A. 2000 --

21 Q. 2004.

22 A. 2014? You said 2014.

23 Q. I'm sorry. My mistake. October 14th, 2004, you
24 could buy B1, that was a finished product, correct?

14:29:45 25 A. No, I would not say it was a finished product.

1 Q. But it was a product that was available for sale?

2 A. It was a marketable -- it was a marketable product,
3 yes.

4 Q. Okay. And your point is that so in connection with
14:29:56 5 this project, the hours that you're talking about that
6 needed to be devoted to the project that are listed here
7 on Exhibit 11, you would agree with me that the vast
8 majority of them weren't with respect to B1, which is a
9 product that's out in the market, but instead they were
14:30:12 10 with respect to In-Flight Enterprise?

11 A. These hours were a hundred percent related to
12 In-Flight Enterprise.

13 Q. Thank you.

14 A. That is correct.

14:30:21 15 What I was -- what I was saying was
16 comparatively as far as effort goes, 5,000 hours is a
17 very small amount of time compared to developing Business
18 One.

19 Q. But in terms of percentages going forward,
14:30:35 20 virtually all of the hours that were to be devoted to the
21 project going forward were going to be devoted to the
22 In-Flight Enterprise part of it?

23 A. Were going to be, but that absolutely did not come
24 to play. SAP had in place hundreds of hours --

14:30:51 25 Q. We're going to talk about the effort that SAP

1 expended to assist here, but the plan here in October of
2 2004, going forward, was that the vast majority of the
3 work to be done in the future was going to be done by
4 IBIS in connection with In-Flight Enterprise, that's the
14:31:05 5 only point I'm trying to make?

6 A. Yes.

7 Q. Thank you.

8 A. We assumed we had a viable product when we started.

9 Q. Thank you.

14:31:16 10 Take a look at Exhibit -- well, and just to
11 be clear, Hodell was aware, not just that the In-Flight
12 Enterprise code was from scratch and was untested --

13 A. Um-hmm.

14 Q. -- but they would effectively be a pioneer in
14:31:32 15 connection with the implementation of this new product in
16 the wholesale fastener distribution industry, right?

17 A. Yes, they were -- they were one -- yes. Correct.

18 Q. Take a look, please, at Exhibit 740.

19 Just to be clear, this is a November 11th,
14:32:04 20 2004 e-mail.

21 Do you see that there?

22 A. Okay.

23 Q. From Otto Reidl to you and Dan Lowery.

24 Do you see that there?

14:32:16 25 A. Yes, I see it.

1 Q. And he reports to you that, "The attached document
2 is a revision to the draft you sent us, although we are
3 unhappy about playing a developer (pioneer, the guys with
4 the arrows in the back)."

14:32:29 5 Do you see that there?

6 A. Yep.

7 Q. And that's consistent with your point which is that
8 Hodell understood they were a pioneer in connection with
9 this solution, right?

14:32:37 10 A. Yes.

11 Q. And we were talking about the different components
12 of the solution. We talked about B1 and In-Flight.

13 The third component was Radio Beacon,
14 right?

14:32:45 15 A. That's correct.

16 Q. And that was, of course, at the heart of the
17 dispute that we went over in connection with Exhibits
18 195, 311, and 312, right?

19 A. Correct.

14:32:54 20 Q. Okay. So let's talk about transaction volume a
21 little bit in connection with Hodell and this project.

22 You would agree with me that there were a
23 number of factors that affect software performance?

24 A. Correct.

14:33:07 25 Q. Right. And one of them is obviously the number of

1 users on the system?

2 A. That's correct.

3 Q. And likewise, transaction volume is one of the
4 factors that affects software performance, right? Things
14:33:19 5 like the number of products, the number of customers, the
6 number of vendors that a customer has?

7 A. That's correct.

8 Q. And just focusing on the number of transactions,
9 you would agree that the Hodell transaction environment
14:33:35 10 was relatively high? In other words, they had a lot of
11 transactions?

12 A. They have -- they have a large number of SKUs.
13 They have a lot of master data.

14 Q. Okay. You would agree that they have a complex
14:33:50 15 environment?

16 A. For a distributor, yes.

17 Q. Okay. And you know that from your years of working
18 with Hodell?

19 A. Yes.

14:34:01 20 Q. Right?

21 So after you talked to Otto and he told you
22 to drill down, okay, you testified that you had two
23 out-of-town trips in connection with B1, and that one of
24 them was Las Vegas and one of them was Atlanta, that was
14:34:17 25 earlier today?

1 A. That is correct.

2 Q. Okay. I'm going to try to talk through these and
3 unpack some of your testimony. All right?

4 I'm going to start with the Vegas trip.

14:34:27 5 That was in early 2004, fair enough?

6 A. If you say so. I don't -- I don't remember.

7 Q. Okay. You testified today that you talked with Dan
8 Kraus, Ralf Mehnert-Meland, and Chris Robinson and Ken
9 Lorenz when you went on your trip to Vegas.

14:34:50 10 Does that sound right from earlier today?

11 A. I believe that is correct.

12 Q. But at your deposition three years ago, isn't it
13 right that you were pretty clear that the only person you
14 spoke to about the capabilities of B1, when you went to
14:35:06 15 Las Vegas, was Dan Kraus?

16 A. I -- I must have been mistaken because I remember
17 standing with Ralf Mehnert very specifically going over a
18 list, a litany of questions that I had.

19 Q. Well, you took two trips, right?

14:35:26 20 A. Um-hmm.

21 Q. One was to Vegas and one was to Atlanta, right?

22 A. Correct.

23 Q. And maybe you talked to Ralf Mehnert in Atlanta,
24 right?

14:35:41 25 A. Did I -- I'm sure I talked to Ralf Mehnert in

1 Atlanta as well.

2 Q. And you just don't remember, I think your testimony
3 now appears to be, whether you talked to just Dan Kraus
4 in Vegas or whether you talked to Dan and all those other
14:35:57 5 guys you listed when you were in Vegas, right?

6 A. I -- I know that I spoke to Dan in pretty much
7 every conversation, every instance when we were together,
8 and for the most part, Ralf Mehnert was there and so was
9 Chris Robinson.

14:36:16 10 Q. For the most part. We're trying to be a little
11 more specific. Why don't we take a look at your
12 deposition, okay? Do you have that transcript there with
13 you?

14 A. I do not.

14:36:26 15 Q. Can someone please hand the witness the deposition
16 transcript?

17 Now, you remember being deposed, right?

18 A. I do.

19 Q. You testified under oath for a period of hours,
14:36:40 20 right?

21 A. Yes, I did.

22 Q. Okay. And this was coming up now on three years
23 ago, right?

24 A. Yes.

14:36:51 25 Q. Your deposition would have been three years closer

1 to the facts in this case which took place way back in
2 '03, '04 and '5, et cetera, correct?

3 A. That's correct.

4 Q. Okay. Take a look at Page 197, 12, would you
14:35:46 5 please?

6 You were asked by counsel the following
7 question:

8 "You were asked a series of questions about
9 your comment that you believe that Business One was
14:35:54 10 suitable for any -- for anyone from a company anywhere
11 from three up to 500 users? I was a little bit unclear
12 as to a portion of your testimony, I'll tell you, and I'm
13 just going to try and clarify it.

14 "Answer: Sure.

14:36:09 15 "Question: Is it your contention that
16 somebody from SAP and -- is it your contention that
17 somebody from SAP --"

18 THE COURT: Hang on for a second.

19 Try it again now.

14:37:35 20 MR. MILLER: Thank you, Your Honor.

21 BY MR. MILLER:

22 Q. Let's look at your deposition testimony
23 starting -- we'll start over, Page 197, Line 12.

24 "Question: You were asked a series of
14:37:53 25 questions about your comment that you believe that

1 Business One was suitable for anyone -- anywhere from a
2 company anywhere from three up to 500 users. I was a
3 little bit unclear as to a portion of your testimony,
4 I'll tell you, and I'm just going to try and clarify it
14:38:06 5 in this way.

6 "Answer: Sure.

7 "Question: Is it your contention that
8 somebody from SAP, an SAP employee, actually told you
9 that Business One was suitable for a company with three
14:38:16 10 to up to 500 users?

11 "Answer: Yes.

12 "Question: Is that your contention?

13 "Answer: Yes.

14 "Question: Who do you believe told you
14:38:26 15 that?

16 "Answer: Dan Carr and Ralf Mehnert, both
17 at independent times.

18 "Question: Dan Carr?

19 "Oh, I'm sorry, not Dan Carr; Dan Kraus.

14:38:36 20 "Question: Dan Kraus told you it and you
21 also believe Ralf Mehnert-Meland told you that?

22 "Answer: Correct.

23 "Question: Did they tell you at the same
24 time?

14:38:44 25 "Answer: No.

1 "Question: When did Dan Kraus tell you
2 that?

3 "Answer: I believe that it was at the FKOM
4 meeting that I attended.

14:38:54 5 "Question: When was that?

6 "Answer: I don't remember.

7 "Question: How many FKOM meetings have you
8 attended?

9 "Answer: Just one for Business One during
14:39:03 10 that period of time. I've attended many since then.

11 "Question: So there would be one meeting
12 that you'd be thinking of specifically, right?

13 "Answer: Yeah. But Dan communicated that
14 to me.

14:39:15 15 "Question: How did he communicate it to
16 you?

17 "Answer: Just in a conversation as it
18 related to the market we were trying to penetrate with
19 our development and with our product specific to the
14:39:24 20 industry that we were going after.

21 "Question: Is this a one-on-one
22 conversation between just yourself and Dan Kraus?

23 "Answer: I don't know if Tim Lowe was
24 there or not."

14:39:37 25 That was your testimony at your deposition,

1 isn't that right?

2 A. Yes.

3 Q. And you don't talk about Ralf Mehnert-Meland or
4 Chris Robinson or Ken Lorenz being part of your
14:39:50 5 conversation with Dan Kraus in Las Vegas, right?

6 A. That specific conversation? No.

7 Q. Well, that's the -- you took two trips before you
8 reported back to Otto Reidl on B1, right, the trips we
9 discussed, Las Vegas and Atlanta, correct?

14:40:06 10 A. Correct. That --

11 Q. Forgive me, sir. And you testified this morning
12 about both of those trips, right?

13 A. Yes.

14 Q. And I'm focused on the Vegas one, okay?

14:40:18 15 A. Okay.

16 Q. And --

17 THE COURT: I'm going to have to interrupt
18 you, Mr. Miller, because we're going to have to turn the
19 connections off and turn them back on again.

14:40:33 20 MR. MILLER: Okay.

21 THE COURT: Do you want to take about ten
22 minutes?

23 (Jury out).

24 (Recess taken).

15:00:28 25 (Proceedings resumed in presence of the

1 jury as follows:)

2 THE COURT: Well, we think we got
3 everything set.

4 We'll see.

15:00:45 5 Mr. Miller, you may continue.

6 MR. MILLER: Thank you, Your Honor.

7 BY MR. MILLER:

8 Q. Mr. Van Leeuwen, I'm going to try and somewhat pick
9 up where we left off so we don't have to go through much
15:00:54 10 of that testimony.

11 Do you recall we were just reading through
12 your deposition testimony, right?

13 A. Yes.

14 Q. And it was about the trip you took to Las Vegas and
15:01:01 15 the conversation that you had about the capabilities of
16 B1 when you were there in Vegas, correct?

17 A. Correct.

18 Q. And you would agree with me that your deposition
19 clarifies that the conversation that you had in Las Vegas
15:01:13 20 wasn't with Ralf Mehnert, Chris Robinson, Ken Lorenz and
21 Dan Kraus as you testified earlier, but instead it was
22 just with Dan Kraus, right?

23 A. No. That's not correct.

24 Q. You would agree with me that your deposition
15:01:28 25 testimony makes a reference just to a conversation with

1 Dan Kraus, right?

2 A. That's -- that's a reference to one of many
3 conversations that I had on that trip.

4 Q. Okay.

15:01:42 5 A. So when you talk about capability, there were
6 multiple conversations that were had.

7 Q. And in your deposition --

8 A. You're pointing to one specific one with Dan Kraus.

9 Q. Well, your deposition, I'll flip to the end of it,
15:01:54 10 it's 303 pages long, does that sound about right to you?

11 A. Yes.

12 Q. Would you agree with me that there's nowhere in
13 that deposition where you discuss any conversation in Las
14 Vegas in 2003 with anyone but Dan Kraus?

15:02:10 15 A. That's because nobody asked me.

16 Q. Okay. Let's look back at just at the piece of the
17 testimony that starts at 198, okay? With respect to the
18 Vegas trip and your conversations starting on Line 16.

19 Do you see that there?

15:02:25 20 A. Of which page? I'm sorry.

21 Q. 198.

22 A. Okay.

23 Q. Actually we should start on Line 13.

24 "When did Dan Kraus tell that you? I
15:02:36 25 believe that was at the FKOM meeting that I attended.

1 "Question: When was that?

2 "Answer: I don't remember.

3 "Question: How many FKOM meetings have you
4 attended?

15:02:46 5 "Answer: Just one for Business One during
6 that period of time. I've attended many since then.

7 "Question: So there will be one meeting
8 that you'd be thinking of specifically, right?

9 "Answer: Yeah. Where Dan communicated
15:02:59 10 that to me.

11 "Question: How did he communicate it to
12 you?

13 "Answer: Just in a conversation as it
14 related to the market we were trying to penetrate with
15:03:10 15 our development and with our product specific to the
16 industries that we were going after.

17 "Question: Is this a one-on-one
18 conversation, just yourself and Dan Kraus?

19 "Answer: I don't know if Tim Lowe was
15:03:22 20 there or not."

21 Do you see that there?

22 A. Yes.

23 Q. That was your testimony, right?

24 A. Yes. Absolutely.

15:03:29 25 Q. And just to be clear --

1 A. Understand --

2 Q. Sir, just to be clear, when you testified on direct
3 examination, this guy, Tim Lowe, who you are referencing
4 in your deposition, you didn't talk about Tim Lowe at all
15:03:41 5 earlier today, right?

6 A. Correct.

7 Q. Okay. You talked about --

8 A. He's not an employee. He's not --

9 Q. Forgive me, sir. You asked about Dan Kraus, Ralf
15:03:51 10 Mehnert, and Chris Robinson and Ken -- you testified
11 about Dan Kraus, Ralf Mehnert, Chris Robinson and Ken
12 Lorenz at; this Vegas meeting, right?

13 A. Correct.

14 Q. And you would agree with me if I gave you as much
15:04:04 15 time as you wanted to look through this 303-page
16 deposition, you'd not be able to find any suggestion that
17 your conversation in Las Vegas about the capabilities of
18 B1 was with anyone other than Dan Kraus?

19 A. Let me be clear.

15:04:20 20 Q. Sir, can you -- before we move on, can you answer
21 that question? You wouldn't be able to find -- you
22 reviewed your deposition before today, right?

23 A. No.

24 Q. Okay. But if I gave you all the time in the world,
15:04:33 25 you couldn't find anywhere in that deposition where you

1 explained after those many, many hours under oath where
2 you testified about the capabilities of B1 in your
3 meetings, no testimony other than what I just read that
4 suggests that you had a conversation in Vegas about the
15:04:48 5 capabilities of B1 with anyone but Dan Kraus?

6 A. Listen, the question is very specific on Page 198.
7 You are asking about the user count. That is one
8 component of the performance of the system.

9 I had one conversation with Dan Kraus at
15:05:04 10 this meeting where we talked about that.

11 I had multiple meetings. FKOM is a
12 multiple-day event. I had other conversations in regards
13 to other aspects of performance with other SAP people
14 while I was at that show.

15:05:18 15 Q. Got it.

16 So your point is notwithstanding the
17 testimony that I just read, and the references therein to
18 a single communication, your point is there were other
19 communications; you just didn't talk about them when you
15:05:32 20 got deposed, right?

21 A. I was --

22 Q. Correct?

23 A. -- asked a very specific question.

24 Q. Yes or no, please. Sir, it's a very simple
15:05:37 25 question. Thank you.

1 A. Yes. I was asked a very specific question on the
2 deposition about user count.

3 Q. Fine. Let's talk about the user count. Let's talk
4 about that.

15:05:44 5 You testified today, did you not, that
6 during the Vegas trip, when you discussed the
7 capabilities of B1, you were told by these many people at
8 SAP that B1 was good for up to 300 users, right?

9 A. And -- yes. That's correct.

15:06:04 10 Q. And that's the number you used. In fact, you
11 testified today repeatedly that the B1 number that was
12 communicated to you by SAP was 300, right?

13 A. 300 plus, that is correct.

14 Q. When you --

15:06:19 15 A. 300 plus.

16 Q. Excuse me, sir. When you testified earlier today,
17 you didn't say 300 plus, did you? You said it was 300,
18 correct? Yes or no.

19 A. I believe I said -- I believe -- no.

15:06:30 20 Q. Okay. We'll go back and read your transcript.

21 You don't think today with these ten jurors
22 listening that when you testified about your conversation
23 in Las Vegas, you don't think that you testified that you
24 were told that B1 was good for up to 300 users? You
15:06:47 25 don't think that's what you said?

1 A. I think I said three, 300 to 400 users is what I
2 believe I said.

3 Q. You didn't say 500 users, though, did you?

4 A. No, but the --

15:06:59 5 Q. Fine. Thank you. Let's -- you want to talk user
6 counts. Let's look at your deposition because when you
7 testified at your deposition, sir, about this
8 conversation in Las Vegas where you were supposedly told
9 by SAP that B1 was good for some number of users, when
15:07:18 10 you testified this at your deposition -- about this at
11 your deposition, you didn't say 300; you said 500, right?

12 A. Both are accurately portrayed in the SAP document.

13 Q. Sir, yes or no, do you remember what you testified
14 to at your deposition with respect to the Vegas
15:07:35 15 conversation and the number of users you were supposedly
16 told that B1 was good for?

17 Do you remember?

18 A. Three, three years ago? No, I'm going to have to
19 go back through the deposition.

15:07:46 20 Q. Fine. I'll help you out.

21 Turn to Page 197, please, Line 12.

22 A. Okay.

23 Q. This testimony is going to be familiar because we
24 looked at this just a minute ago.

15:07:55 25 "Question: You were asked a series of

1 questions?"

2 A. I --

3 Q. Excuse me, sir. We're going to review the
4 testimony.

15:08:03 5 "Question: You were asked a series of
6 questions about your comment that you believe that
7 Business One was suitable for anywhere, for a company
8 anywhere from three to 500 users. I was a little bit
9 unclear as to a portion of your testimony, I will tell
15:08:16 10 you, and I'm just going to try and clarify it this way.

11 "Answer: Sure.

12 "Question: Is it your contention that
13 somebody from SAP, an SAP employee, actually told you
14 that Business One was suitable for a company with three
15:08:29 15 up to 500 users?

16 "Answer: Yes.

17 "Question: Is that your contention?

18 "Answer: Yes."

19 That was your testimony, right?

15:08:37 20 A. Yes.

21 Q. So at your deposition --

22 A. Right.

23 Q. -- contrary to your testimony today, your story was
24 that someone at SAP told you that B1 was good for up to
15:08:49 25 500 users, correct?

1 A. Again, I did not have an opportunity to review my
2 deposition.

3 Q. Sir, sir, do you agree with me your deposition
4 testimony is inconsistent with what you testified about
15:09:01 5 today because today you talked about 300 or you're saying
6 now 400, but in your deposition, you talked about 500?

7 MR. LAMBERT: I'm going to object, Your
8 Honor.

9 A. Between three to 500 users, three to 400 is
15:09:14 10 accurate.

11 THE COURT: Excuse me, Mr. Miller. We've
12 gone over this enough.

13 MR. MILLER: Thank you. I'm going to keep
14 moving, Your Honor.

15:09:20 15 THE WITNESS: Absolutely.

16 BY MR. MILLER:

17 Q. There are no notes, sir, of any conversations that
18 you had with anyone at SAP when you were in Vegas that
19 say any of these numbers, either 300 or 400 or 500,
15:09:37 20 right?

21 A. Just the marketing material.

22 Q. Right. Leaving the marketing material aside, you
23 have no notes that corroborate that you were told by SAP
24 in Vegas in early 2004 that B1 was good for 300 users,
15:09:55 25 400 users, or 500 users, right, the three numbers you've

1 now used? Fair enough?

2 A. Fair enough.

3 Q. And you realize that Dan Kraus denies that he told
4 you that B1 was good for any particular number of users?

15:10:11 5 MR. LAMBERT: Objection, Your Honor.

6 THE COURT: The objection is sustained.

7 A. I am not aware of that.

8 Q. And this conversation that you had, or these
9 conversations that you had, in Las Vegas, you would agree
10 with me now these were generally with respect to your
11 interest and IBIS's interest in developing the vertical
12 solution, an integrated microvertical; they were
13 generally in connection with that initiative and not
14 specific to Hodell?

15:10:41 15 A. I would not say that that's the case at all.

16 I would say that it was a joint -- it was
17 combined.

18 Q. You would agree with me that at your deposition,
19 you testified that these conversations related generally
15:10:55 20 to the market you were trying to penetrate and the
21 industries you were going after and you never testified
22 at your deposition when you were asked extensively about
23 the Vegas meeting that it had anything to do specifically
24 with Hodell?

15:11:09 25 A. That is correct in my deposition.

1 Q. Thank you.

2 A. Although you have e-mails that showed me talking
3 about that.

4 Q. Thank you. Let's talk about Atlanta, okay?

15:11:17 5 And if there are e-mails you want me to
6 look at, feel -- we'll get into those, but for now, I
7 want to shift to Atlanta, but I'm happy to look at any
8 document you want to show me that you say is inconsistent
9 with where we are, fair enough?

15:11:31 10 A. Okay.

11 Q. This trip to Atlanta, this would have been later in
12 the spring of 2004, right?

13 A. I believe that's correct, yes.

14 Q. Okay. And in connection with the Atlanta trip,
15:11:45 15 again earlier today when you were testifying about what
16 you were told, your position was that you spoke with
17 multiple SAP people about B1's capabilities, right?

18 A. That's correct.

19 Q. Okay. In your testimony today, and we moved
15:12:04 20 through it pretty quickly, but I took pretty good notes,
21 was that when you went to Atlanta and talked about the
22 capabilities of B1, the SAP people who reported to you
23 that B1 was good for up to 300 users were Ralf Mehnert,
24 Dan Kraus, and Ken Lorenz, right?

15:12:21 25 A. I would say that is correct.

1 Q. Okay. But again, sir, in your deposition, you were
2 clear, were you not, that when you went to Atlanta and
3 had a conversation about the capabilities of B1, you
4 talked to one person about that and one person only, and
15:12:37 5 it was Ralf Mehnert-Meland, isn't that right?

6 A. I -- again, I do not remember that.

7 Q. You don't remember whether it was multiple people
8 like you testified earlier today, or if it was Ralf
9 Mehnert-Meland, right?

15:12:51 10 A. No. I don't remember my testimony from three years
11 ago.

12 Q. Okay.

13 A. In detail.

14 Q. Let's look at it. Please turn to Page 197, Line
15:13:01 15 20.

16 "Question: Is it your contention that
17 somebody FROM SAP, an SAP employee" -- oh, strike that.

18 Move to Page 204, please. Line 14. We've
19 already looked at 197. We can come back to it if
15:13:28 20 necessary.

21 But, 204, Line 14, in connection with the
22 Atlanta trip.

23 "Question: When I asked you who at SAP
24 told you 500 users, you identified Kraus and
15:13:40 25 Mehnert-Meland?

1 "Answer: Yes."

2 Strike that, the question is general.

3 "When I asked you at SAP who told you 500 users, you
4 identified Kraus and Mehnert-Meland?"

15:13:49 5 "Answer: Yes.

6 "Question: Let's talk about
7 Mehnert-Meland. When you believe -- strike that. How
8 did Mehnert-Meland convey to you that Business One was
9 good for up to 500 users?"

15:14:01 10 "Answer: That conversation was a bit
11 different. That conversation, I mean, I mean, I can -- I
12 don't remember the building. I remember where we were
13 standing. We were standing at the top of a set of
14 elevators and we had approximately a 45-minute
15:14:14 15 conversation in regards to addressing those questions
16 that I'd written down as far as feature functionality to
17 try and identify how much effort would have to go into
18 developing that solution that we had talked about, the
19 American Express relationship.

15:14:32 20 "And I specifically asked the question of
21 scalability, I specifically asked the question of
22 scalability."

23 Do you see that there?

24 A. Yes.

15:14:44 25 Q. Does that help refresh your recollection that when

1 you were in Atlanta, you talked only with Ralf
2 Mehnert-Meland?

3 A. No. It even says Dan Kraus before that.

4 Q. Okay. Well, let's go back, just to be clear, sir.

15:14:58 5 At 197-20, okay?

6 A. No, go to 11.

7 Q. Sir, okay, 197-20?

8 A. 104, 11.

9 Q. "Is it your contention that somebody from SAP, an
15:15:14 10 SAP employee, actually told you that Business One was
11 suitable for a company with three up to 500 users?

12 "Answer: Yes.

13 "Question: Is that your contention?

14 "Answer: Yes.

15:15:22 15 "Question," and this is the interesting
16 part, "Who do you believe told you that?

17 "Answer: Dan Carr and Ralf Mehnert, both
18 at independent times."

19 Now we're talking about two conversations
15:15:32 20 and then you continued: "Dan Carr?

21 "Oh, I'm sorry, not Dan Carr, Dan Kraus.

22 "Question: Dan Kraus told you it, and you
23 also believe Ralf Mehnert-Meland told you that?

24 "Answer: That is correct.

15:15:45 25 "Question: Did they tell you that at the

1 same time?

2 "No.

3 "When did Dan Kraus tell you that?

4 "Answer: I believe that that was at the

15:15:52 5 field kick-off meeting that I attended."

6 Do you see that there?

7 A. Yes.

8 THE COURT: I'm going to have to interrupt.

9 MR. MILLER: Just one question, Your Honor,

15:16:03 10 just so we don't have to go back over that.

11 Q. The field kick-off meeting was in Vegas, right?

12 A. Correct.

13 MR. MILLER: Thank you.

14 Forgive me, we're having technical

15:16:17 15 difficulties. You might not be able to hear it, but the

16 sound that caused us to take a break earlier has come

17 back worse than ever.

18 THE COURT: Looks like his testimony might

19 be over.

15:17:00 20 I think it's coming from Chicago.

21 Give me ten minutes. If the smokers want a

22 cigarette, they can go, okay? You go back and we'll try

23 to get this fixed.

24 (Recess taken)

15:26:27 25 (Proceedings resumed in presence of the

1 jury as follows:)

2 THE COURT: We are going to try again.

3 BY MR. MILLER:

15:26:41

4 Q. Okay. Mr. Van Leeuwen, I'll try and pick up where
5 we left off.

6 You testified --

7 A. Okay.

8 Q. -- with respect to the Atlanta trip earlier today
9 you testified that the number --

15:26:48

10 THE COURT: You have to speak into the mic.

11 MR. MILLER: Forgive me, Your Honor. I was
12 trying not to have feedback.

13 BY MR. MILLER:

14 Q. Back to the Atlanta trip, correct? You following?

15:26:57

15 A. Okay.

16 Q. You testified earlier today that the user number
17 that was communicated to you as being good for Business
18 One was communicated to you by people at SAP was 300,
19 right? This is Atlanta.

15:27:13

20 A. Correct.

21 Q. Okay. And you would agree with me that at your
22 deposition, the user number that you testified under oath
23 that was communicated to you during the Atlanta trip was
24 up to 500, correct?

15:27:25

25 A. Correct.

1 Q. It was a different number?

2 A. In the same, same range, but yes. I didn't include
3 the top end of the range.

4 Q. And you don't have any notes at all that have
15:27:38 5 either 300 or 500 users referenced in connection with
6 this Atlanta meeting, right?

7 A. That is correct. When I sold the business, all of
8 that paperwork went with LSi.

9 Q. You don't have any -- you're not aware, though, of
15:27:54 10 any documents that exist that with respect to this
11 Atlanta meeting and these supposed conversations, you can
12 see the number 300 and then the word users, right?

13 A. I can't recall. Again I don't have access to those
14 documents other than the marketing material that I'm
15:28:14 15 looking at, which says it.

16 Q. Right. Leaving the marketing materials aside which
17 refer to employees, you're not aware of any documents
18 that corroborate that you had a conversation with someone
19 in Atlanta where the phrase "300 users" came up, correct?

15:28:27 20 A. Yes, you're right. I don't have that because I'm
21 not an employee of LSi.

22 Q. Yes or no, sir?

23 A. I don't know.

24 Q. And likewise, it would be true that you don't have
15:28:35 25 a document that has the phrase 500 users in it, either?

1 A. Correct.

2 Q. You don't have either?

3 A. Correct.

4 Q. Okay. And again, you testified today that when you
15:28:48 5 were in Atlanta -- you okay?

6 A. I'm perfectly fine.

7 Q. You testified today that the conversations you had
8 about the capabilities of B1, they were specific to
9 Hodell, right?

15:29:05 10 A. In Atlanta?

11 Q. Correct.

12 A. They would have included both. They would have
13 included Hodell as well as what we were doing from an
14 industry perspective.

15:29:13 15 Q. Okay.

16 And once again, in your deposition, you
17 were clear your conversations in Atlanta, regardless of
18 who they were with, were not specific to Hodell, isn't
19 that right?

15:29:28 20 A. Did I communicate that I was asking the questions
21 specifically on Hodell's behalf? No.

22 Q. No, I'm --

23 A. In my mind, absolutely I was looking at
24 Hodell-Natco, I was looking at a number of customers that
15:29:42 25 had that kind of user count.

1 Q. Sir, I think you testified differently today than
2 you did in your deposition.

3 Let's see if that's true, okay? Fair
4 enough?

15:29:52 5 A. Fair enough.

6 Q. Today you told this jury that when you had meetings
7 in Atlanta to discuss the capabilities of B1, you told
8 this jury that those conversations were specifically with
9 respect to Hodell, right? That's what you told us today?

15:30:08 10 A. Okay. Yes.

11 Q. Okay.

12 A. Look --

13 Q. And in your deposition, sir, Page 54, 19, okay?

14 A. Okay.

15:30:19 15 Q. Page 54, Line 19.

16 Let me know when you're there.

17 A. I'm there.

18 Q. "Question" at Line 19. "Well you mentioned
19 something about a trip to Atlanta where you -- where you
15:30:37 20 were told the software would be appropriate for 300 to
21 500 users. Do you recall that conversation?

22 "Answer: Um-hmm. Nodding.

23 "Question: Do you?

24 "Answer: Three, three users to 500 users.

15:30:50 25 "Question: Three users to 500?

1 "Answer: Three to 500.

2 "Question: Did that conversation also --
3 did you ask any questions during that trip about other
4 aspects --

15:31:04 5 A. I lost audio.

6 Q. Can you hear me now?

7 A. I can, yes.

8 Q. Okay.

9 "Question: Did that conversation also, did
15:31:13 10 you ask any questions during that trip about other
11 aspects of Hodell's business as far as transaction
12 volume, database size, or anything else of that nature?

13 "Answer: No. It was more functional.
14 Other than users, it was more -- the questions that I
15:31:31 15 asked at that point in time were more functional."

16 Do you see that there?

17 A. Yes.

18 Q. Does that help confirm for you that when you had
19 meetings with people at SAP like you say in Atlanta, they
15:31:42 20 were not with respect to Hodell's specifics?

21 A. Sir, I would have to say that --

22 Q. Can you answer that question with a yes or no?

23 A. Our organization -- I would say no.

24 Q. Okay. Would you agree with me that --

15:32:04 25 A. You did not make it clear. No.

1 Q. Let me try this. Would you agree that you would be
2 speculating if you said that you talked about Hodell when
3 you met with SAP in Atlanta?

4 A. Absolutely not.

15:32:12 5 Q. Okay. Let's take a look at Page 193.

6 A. We --

7 Q. Line 9, please.

8 "Question: When you went to this meeting
9 in Atlanta, did you mention to SAP that Hodell-Natco was
10 a prospect for Business One?

11 "Answer: No response.

12 "Question: If you will?

13 "Answer: It would be speculation on my
14 part. We certainly talked about the fastener vertical
15 market. I believe that Chris Robinson already knew about
16 the call that took place from Hodell-Natco to me in
17 regards to American Express, et cetera, et cetera."

18 Do you see that there?

19 A. I do, yes.

15:32:56 20 Q. Okay.

21 Does that help confirm for you that when
22 you were in Atlanta, it would have -- does that help
23 confirm for you that you would be speculating if you said
24 you talked about Hodell when you were in Atlanta?

15:33:07 25 A. Okay.

1 Q. Yes or no?

2 A. The original question is --

3 Q. The original question was: "Would you be
4 speculating if you said that you talked about Hodell when
15:33:16 5 you met with SAP in Atlanta?" Your answer was,
6 "Absolutely not."

7 Now we've looked at your deposition
8 testimony. Do you agree that you would be speculating if
9 you said you talked about Hodell when you were with SAP
15:33:27 10 in Atlanta?

11 A. So --

12 Q. Yes or no?

13 A. Can I explain or no?

14 Q. Can you answer yes or no?

15:33:34 15 A. No.

16 Q. Fine. Let's move on. Let's move on. I have a lot
17 more to cover.

18 "Question: Your testimony earlier today,
19 was it after these meetings in Vegas and Atlanta, you
15:33:51 20 turned around and reported to Otto Reidl that the B1
21 product was good for Hodell up to whatever the number you
22 want to say," is 300 users, right?

23 A. Sir, you are mixing users only with -- with a
24 conversations about functionality, about performance,
15:34:09 25 about a lot of things.

1 Q. I'm asking a question about what you said?

2 A. And that's why I'm having a hard time because
3 you're saying I had a conversation about Hodell
4 specifically. I don't think that I mentioned their name.
15:34:21 5 That would be a speculation.

6 Did I in my mind include Hodell-Natco in
7 the questions that I was asking? Absolutely.

8 Q. Let's talk about what happened after Vegas and
9 after Atlanta, right? You went back and reported to
15:34:37 10 Otto, because he had directed you to drill down and
11 investigate B1, right?

12 A. Yes.

13 Q. And you turned around and reported to Otto that the
14 B1 product was good for Hodell for up to 300 users,
15:34:50 15 right?

16 A. I -- I don't think that I said 300 users or not. I
17 don't -- I don't remember that.

18 I do remember reporting to him that, yes, I
19 felt that the B1 solution was going to be viable for them
15:35:03 20 based on the information I received from the
21 conversations I had with SAP employees.

22 Q. And now your testimony, contrary to what you said
23 earlier, is you don't remember if you gave him a specific
24 user number, right? That's what you just said?

15:35:19 25 A. I don't know that I gave them a specific user

1 number in those two meetings.

2 Q. That's fine.

3 Well, we're not talking about those two
4 meetings. I'm talking about when you reported back to
15:35:28 5 Otto after those two meetings. That's what we're talking
6 about, right?

7 A. You're going to have to explain that to me. I'm
8 sorry.

9 Q. Okay. I'm just --

15:35:38 10 A. I'm not following.

11 Q. I understand. I'm just keying off of your
12 testimony from earlier today.

13 You talked about a meeting in Vegas and you
14 talked about a meeting in Atlanta, and then you told this
15:35:48 15 jury that after that, you quote, unquote, turned around
16 and reported to Otto on the capabilities of B1 and that
17 it was good for up to 300 users.

18 Do you remember that testimony today?

19 A. Okay. Yes.

15:36:05 20 Q. Okay. And now you've just told us that you're not
21 actually sure if you reported a specific user number to
22 Mr. Reidl, right? You said that about 30 seconds ago.

23 A. Okay. Yep.

24 Q. Okay. So let's kind of recap here, right?

15:36:24 25 You agree that this was a complicated

1 project, it was B1, Radio Beacon, and In-Flight, right?

2 A. Yes.

3 Q. And you had these conversations with SAP in Atlanta
4 and in Vegas, I'll switch the order, Vegas and Atlanta,
15:36:44 5 right?

6 A. Right.

7 Q. Okay. And you say that SAP told you that B1 was
8 good for up to some number of users, 300 or 400 or 500,
9 right?

15:36:56 10 A. Yes.

11 Q. And you just took that, and this is your phrase,
12 not mine, at face value, right?

13 A. Again I also relied on the marketing material that
14 I was provided.

15:37:10 15 Q. Okay. So you were relying on the conversations
16 that we've discussed and marketing material, right?

17 A. That is correct.

18 Q. And you took that, and this is your phrase, not
19 mine, at face value, right?

15:37:26 20 A. That is correct. I had no reason to believe that
21 SAP was going to lie to me.

22 Q. In fact --

23 MR. MILLER: Move to strike, Your Honor.

24 BY MR. MILLER:

15:37:35 25 Q. You testified three times in your deposition that

1 you took what was supposedly said to you by one person or
2 more about 300 or 400 or 500 users that may or may not
3 have included Hodell in the conversation, whatever it was
4 that SAP told you, you testified three times in your
15:37:53 5 deposition you just took that at face value, right?

6 A. I -- I had no way of measuring it, other than the
7 information that I had at the time.

8 Q. Because you didn't -- well, you could have -- you
9 didn't, for example, conduct any further discovery or due
15:38:11 10 diligence, right?

11 A. Around the user count? No, I did not.

12 Q. Okay. Because you felt like you don't need to
13 spend any real effort on that, right?

14 A. Correct. I had an SAP document that said it could
15:38:27 15 do that, and I had conversations that I had with people
16 that were in charge of the product line at that point in
17 time and told me that that was the capability.

18 Q. So you had the conversations we discussed and the
19 marketing material, right?

15:38:39 20 A. Correct.

21 Q. And the marketing material refers to employees,
22 right? Not users?

23 A. Correct.

24 Q. And you took what SAP said in these conversations
15:38:49 25 we've been talking about, and these marketing materials,

1 and notwithstanding the fact that Otto Reidl told you as
2 his partner to drill down, you just took what SAP said at
3 face value? And that's your version of the SAP
4 conversations, right? True?

15:39:07 5 A. That's correct. That's correct.

6 Q. Okay. You didn't feel like you needed to drill
7 down, notwithstanding the fact that Otto Reidl told you
8 to drill down?

9 A. Sir, I would ask you how was I to drill down beyond
15:39:18 10 what I did?

11 Q. You didn't feel like --

12 A. No, I'm not going to answer the question unless you
13 give me the opportunity to ask you how was I to change
14 that?

15:39:25 15 Q. Sir --

16 A. What more would I have been expected to do?

17 Q. Notwithstanding Otto Reidl's direction to you to
18 drill down, you agree that you did not drill down?

19 A. I drilled down to the extent that I could.

15:39:35 20 Q. Let's take a look at your deposition and see what
21 you testified to under oath about whether you drilled
22 down. Okay?

23 A. Okay.

24 Q. Let's look at Page 46.

15:39:54 25 THE COURT: Just so you know, we're

1 finishing at 4:30 and this witness is finished at 4:30
2 whether you're finished or not.

3 MR. MILLER: Do we know what time it is
4 now?

15:40:03 5 THE COURT: It's about 20 to 4:00.

6 MR. MILLER: Okay. Thank you, Your Honor.
7 I'll move as fast as I can.

8 BY MR. MILLER:

9 Q. "Question, Page 46, Line 12: "Based on your
15:40:20 10 discussions with the folks at SAP in the spring of '04
11 and these training classes, did you assure Mr. Reidl and
12 Hodell-Natco that SAP Business One would be appropriate
13 for not only their immediate needs but their planned
14 growth of up to 300 users?

15:40:33 15 "Answer: You know, I'd have to say that,
16 you know, other than having very specific information
17 that this was the expected range of users that the
18 application could support, having asked the question
19 again from a personal perspective in the development that
15:40:47 20 we did and, you know, having asked it for Hodell-Natco,
21 it really wasn't an issue that I needed to drill down on
22 because it was not known to be an issue. So I didn't, I
23 didn't spend a lot of effort other than taking at face
24 value the information that was being provided at the
15:41:06 25 time."

1 Do you see that there?

2 A. Yes. That's correct.

3 Q. And that was your testimony, right?

4 A. That's correct.

15:41:10 5 Q. Okay. Let's move on.

6 A. I felt that I had exhausted --

7 Q. Sir, forgive me, we have some timing issues. I
8 want to keep moving.

9 Take a look at 291, please.

15:41:27 10 A. Was that a page in here? No.

11 Q. This is the development agreement. You've seen
12 that before, right? Right, you've seen the development
13 agreement before?

14 A. I'll have to take a minute to review it. This was
15:41:57 15 signed by Dan Lowery so I have to review it.

16 Q. Signed by Dan Lowery at the end on behalf of LSi
17 and IBIS, correct?

18 A. That's correct.

19 Q. Okay. Look at general terms on the first page,
15:42:16 20 please.

21 A. Okay.

22 Q. See under Item 1, Hodell-Natco will advance, talks
23 about 180,000 of the \$300,000 purchase price, you see
24 that there, right?

15:42:26 25 A. Yes.

1 Q. Okay. Go to the second page. See where it says
2 "In exchange for the downpayment, right, IBIS Group will,
3 one, provide Hodell-Natco with the unlimited user license
4 for In-Flight Enterprise," do you see that there?

15:42:42

5 A. Yes.

6 Q. Okay. And then under Item -- and that
7 user -- those IFE licenses, those are what we talked
8 about before that were in Exhibit 11, it was estimated to
9 be 3816 hours, do you remember that, had no charge next
10 to it?

15:42:57

11 A. Yes. Yes.

12 Q. Okay.

13 A. Yes, I remember that.

14 Q. Okay. And yet the rate that Hodell was charging
15 was \$150 -- pardon me -- the rate that IBIS was charging
16 was \$150 an hour?

15:43:02

17 A. If you did the math and that's what it came out to,
18 then, yes, that's correct.

19 Q. Right. If you do the math and you multiply 3816 by
20 \$150 an hour, you get to about 572,000.

15:43:19

21 Can you trust me on that math?

22 A. Sure.

23 Q. So in exchange for the \$300,000, one of the things
24 that Hodell gets is Item 1, which are the unlimited free
25 IFE licenses which could have a value as much as 572,000,

15:43:31

1 right?

2 A. Sure. Okay.

3 Q. Okay. And Item 3, they'd also get a hundred
4 dollars for at least the next 1,000 licenses that were
15:43:45 5 sold for IFE, right?

6 A. I believe that's what it says, yes.

7 Q. So the deal was Hodell pays 300,000 and in
8 exchange, they get maybe \$572,000 worth of IFE work, plus
9 they might make an extra hundred thousand dollars later
15:44:09 10 if IFE takes off and people are able to sell those IFE
11 licenses to other companies in the fastener business,
12 right?

13 A. That's what this document says, yes.

14 Q. Okay. Let's switch gears.

15:44:26 15 Let's talk about how B1 was sold.

16 SAP didn't engage in any direct B1 sales,
17 right? They used value added resellers. I just kind of
18 want to set the stage for the jury.

19 A. Yes, they were -- the sale was through a VAR, that
15:44:48 20 is correct, but they had engagement and involvement.

21 Q. Say that again.

22 A. The software was sold through a VAR.

23 Q. Value added reseller?

24 A. It was on -- it was on a value added reseller
15:45:02 25 paper, but, for example, Dan Carr was very aware of what

1 was going on, the agreements, the licensing that was put
2 together --

3 Q. We're going to put -- you say Dan Carr. It's not
4 actually Dan Carr, right, it's Dan Kraus?

15:45:15 5 A. I'm sorry, Dan Kraus.

6 Q. We're going to talk about what he was aware of, but
7 the primary person in contact with Hodell was the value
8 added reseller, right?

9 A. Correct.

15:45:24 10 Q. And that was you? You were the primary contact for
11 the value added reseller with Hodell?

12 A. It was American Express and IBIS through to a
13 certain point, and then IBIS took over.

14 Q. And American Express bowed out of this pretty
15:45:38 15 early, right?

16 A. I can't remember the date.

17 Q. Fine.

18 At some point, American Express was no
19 longer involved; it was just you on behalf of IBIS
15:45:49 20 communicating with Hodell to sell B1?

21 A. That's correct.

22 Q. Okay. And that stayed the same --

23 A. And by me, you mean -- you mean LSi/IBIS.

24 Q. I mean you were the primary -- we're going to talk
15:46:03 25 about whether it was LSi or IBIS, but you were the

1 primary communicator with Hodell?

2 A. That's correct. I sold the application. That is
3 correct.

15:46:15

4 Q. Okay. And that stayed the same shifting to LSi and
5 IBIS even after LSi acquired IBIS, right?

6 A. Correct.

7 Q. And that also stayed the same after the development
8 agreement was signed, the one we just looked at, in
9 December of 2005?

15:46:27

10 A. Lost audio.

11 Q. That also stayed the same after the development
12 agreement was signed in December of 2004, right, that you
13 were the primary contact with Hodell?

14 A. December of 2004? That was in December of 2004?

15:46:43

15 Q. Yes.

16 A. I -- I remained as the key point for another month
17 after that.

18 Q. Well, and we're going to talk about that, but you
19 were originally what, in your own words, you were the
20 captain of the ship for this project, right?

15:46:53

21 A. Up through early 2005, that is correct.

22 Q. Let's look at Exhibit 32. We looked at this
23 before. It's the SDK.

24 A. Okay. I have a lot of paper going on here.

15:47:26

25 Got it.

1 Q. I'm going to go right to Section 2.1. This is
2 basically the agreement, sir, don't you agree that
3 permits a company like IBIS, which signed this agreement
4 with SAP, to develop add-ons like In-Flight Enterprise,
15:47:47 5 correct?

6 A. I'd have to read it. Hang on.

7 Q. No, that's fine. You're reading Section 2.1 under
8 "Grant of license"?

9 A. Correct.

15:47:57 10 Q. Okay.

11 A. Sir, I'm sorry, what was your question again?

12 Q. My question is very simple. Wouldn't you agree
13 that this is the SDK agreement that permits -- would
14 permit a company like IBIS to develop add-ons like
15:48:53 15 In-Flight Enterprise?

16 A. Yes.

17 Q. Okay. And the section you just looked at is the
18 grant of the license that would permit IBIS to do that,
19 right?

15:49:02 20 A. Yes.

21 Q. Okay. And if you flip --

22 A. I believe it's -- it's not an acquisition. I think
23 we're renting the software is what it says in here.

24 Q. Well, you're actually developing an add-on. You're
15:49:13 25 permitted to use the SAP software to develop your add-on

1 like In-Flight Enterprise, right?

2 A. Right. That is correct.

3 Q. So then you look at the front -- well, actually go
4 to 5.2. Actually I'll save you a step. Let's include
15:49:27 5 this step. Look at the very first page, definition 1.5
6 at the bottom. See it says --

7 A. Okay.

8 Q. -- "Extension means"?

9 A. Yes.

15:49:38 10 Q. And then there's a definition of the extension on
11 the next page. It's a bunch of technical stuff.
12 Highlighted on the top of the next page.

13 A. Yep.

14 Q. These are the add-ons, right? That's a description
15:49:50 15 of an add-on in text speak?

16 A. That's -- that's the description of an extension.

17 Q. Right. Thank you.

18 And an extension is an add-on? I just want
19 to make sure the jury doesn't get confused?

15:50:02 20 Right?

21 A. From a technical perspective, an add-on could be a
22 completely separate and disparate piece of software that
23 is being interfaced using the SDK.

24 In this case, it was software that was
15:50:26 25 developed using the SDK.

1 Q. The IFE, the In-Flight Enterprise --

2 A. Yes.

3 Q. -- was an extension under this agreement, right?

4 A. That is correct.

15:50:37 5 Q. All right. Thank you.

6 And if you go to the end of Page 7, there's
7 a paragraph called "Termination."

8 A. Okay.

9 Q. And you would agree with me that if the company
15:50:57 10 signing this contract with SAP doesn't subsequently enter
11 into a partner agreement, otherwise known as a
12 distribution agreement, then this SDK agreement expires
13 in 180 days, right?

14 A. Based on what is written here, I would have to say
15:51:13 15 that's true.

16 Q. Okay. Take a look at Exhibit 9. Because that SDK
17 that we just looked at, that was dated December, 2003,
18 right?

19 A. Yes.

15:51:30 20 Q. And then LSi acquired IBIS in May of 2004?

21 A. Correct.

22 Q. Okay. And if there was no distribution agreement,
23 that SDK agreement would have expired in June of 2004,
24 right?

15:51:47 25 A. I'd have to say that's true as I'm looking --

1 Q. And you're not aware of any distribution agreement
2 between IBIS and SAP, are you?

3 A. No, it would have been LSi. It wouldn't have been
4 IBIS at that point.

15:52:01 5 Q. Because IBIS didn't have a distribution agreement
6 with SAP, right?

7 A. I don't remember that. I don't remember. I
8 honestly don't remember.

9 Q. If I told you that one's never existed in this
15:52:12 10 case, would you disagree with me?

11 A. I couldn't. I don't remember.

12 Q. Okay.

13 Well, let's look at this Exhibit 9 because
14 Exhibit 9's dated October 14th, 2004, right? We looked
15:52:22 15 at that before, right?

16 A. Which one is that? I'm sorry.

17 Q. Nine.

18 A. Okay.

19 Q. And on October 14th, 2004, which is after when the
15:52:35 20 SDK would have expired, IBIS is still writing to Hodell
21 about this project, right? It's got IBIS's name at the
22 top, right?

23 A. Yeah, as a company of LSi.

24 Q. If you look down the bottom, it's signed by
15:52:59 25 you -- not signed, but the names of you and Dan are

1 there, right?

2 A. Yes.

3 Q. And it says for you "COO, The IBIS Group," and for
4 Dan, "President, The IBIS Group," right?

15:53:14 5 A. That's correct.

6 Q. So you're writing this October 14th, '04 letter on
7 IBIS letterhead with yours and Dan's names as IBIS
8 representatives at a point in time, October 14th, 2004,
9 when IBIS has zero contractual relationship with SAP
10 whatsoever.

15:53:29

11 Right?

12 A. SAP --

13 Q. Yes or no. It's a simple yes or no.

14 A. Well, I can't answer that. I don't know.

15:53:41 15 Q. Because you're not aware --

16 A. I don't know if they did.

17 Q. If you had no distribution -- if IBIS had no
18 distribution agreement, then it would be true that when
19 this letter was written, IBIS had no contract with SAP,
20 right?

15:53:54

21 A. As a subsidiary of LSi, I don't know. I don't know
22 how that would work contractually.

23 Q. Well, let's look at how else IBIS represented
24 itself.

15:54:04 25

Look at Exhibit, look at 291. IBIS signed

1 the development agreement, right, when they had no
2 contractual relationship with SAP?

3 A. Again, I don't know how Dan Lowery has The IBIS
4 Group structured in his corporate structure. I have no
15:54:26 5 idea.

6 Q. I have a very simple question. IBIS was a party to
7 the December, 2004 development agreement, correct?

8 It's right at the top, right? It says,
9 "Development agreement between Hodell, The IBIS Group"?

15:54:39 10 A. Right.

11 Q. Do you see that there?

12 A. Correct. That was pre-acquisition. That is
13 correct.

14 Q. Okay. And look at Exhibit 41. And by the way, you
15:54:49 15 say pre-acquisition. The development agreement was
16 December, 2004, right?

17 A. 32 -- your Exhibit 32 says 2003.

18 Q. No. No. 291. I'm looking at Exhibit 291.

19 A. Yeah. Absolutely. That was after acquisition.

15:55:11 20 I'm saying that the licensing of the SDK
21 was done pre-acquisition. That was your question.

22 Q. And then it expired?

23 We've already covered that, right? If
24 there was no distribution agreement, that expired, right?

15:55:24 25 A. Again, I don't know that.

1 Q. Fine.

2 A. I don't know that.

3 Q. Let me ask you a very simple question. Exhibit
4 291, in December, 2004, IBIS was still operating,
15:55:40 5 correct?

6 A. IBIS was operating, that is correct. How it was
7 structured, I have no idea.

8 Q. Forgive me, sir. And they were a party to the
9 development agreement, right?

15:55:56 10 A. I would say yes, that is correct. Yes.

11 Q. Look at Exhibit 41.

12 A. I have this.

13 Q. This is another IBIS letter to Otto Reidl, right?

14 A. Yes.

15:56:21 15 Q. Okay. And this is dated May 17th, 2005, right?

16 A. That is correct.

17 Q. Thank you. Let's go up. Let me switch gears a
18 little bit.

19 You testified on direct examination about
15:56:37 20 Exhibit 71. Take a look at Exhibit 71, okay?

21 A. One second.

22 Q. And if you go to the back of it, this was the
23 e-mail, if you go I guess to the second page from the
24 back down at the bottom, it's an e-mail from Dan Lowery
15:57:03 25 to Dan Kraus.

1 You see that there, right?

2 A. Dan Kraus, starting at the bottom --

3 Q. Bottom of the second to the last page, 71.3?

4 A. Yep. Yes.

15:57:18 5 Q. Okay. And if you go to the next page, there's the
6 text of Dan's e-mail, Dan Lowery's e-mail to Dan Kraus,
7 right?

8 A. Yes.

9 Q. And then right in the center, there's a big -- the
15:57:30 10 biggest paragraph there, it says "Dale and I have been
11 talking about two large close prospects who want us to
12 write our equipment rental and fastener functionality to
13 SAP."

14 Do you see that there?

15:57:41 15 A. Yes.

16 Q. Okay. And if you go down a couple lines, it says
17 "They're both 150-user deals." Correct?

18 A. Yes.

19 Q. But other than saying that they're 150-user deals,
15:57:51 20 no additional detail about these deals is provided by Dan
21 Lowery to Dan Kraus at SAP, right?

22 A. That is correct. In 2004, that's correct.

23 Q. It doesn't even have Hodell's name in it, does it?

24 A. Not that I can see.

15:58:17 25 Q. And there's nothing in here about transaction

1 volumes or anything like that, right?

2 A. Within this group of e-mails, there's the users and
3 then there's the Caterpillar, John Deere mentioned.

4 Q. That you talked about before?

15:58:36 5 A. Yes.

6 Q. Then go to Exhibit 40.

7 A. Okay.

8 Q. Exhibit 40 is a November 3rd e-mail from Dan Lowery
9 to you, right? Pardon me, from Dan Lowery to Dan Kraus.

15:59:06 10 A. To Dan Kraus.

11 Q. Yeah, sorry. And you're copied on that, right?

12 A. I am, yes.

13 Q. Okay. And Dan Lowery says to Dan Kraus, on
14 November 3rd, 2004, "LSi/IBIS has an opportunity with

15:59:19 15 Hodell-Natco, an existing IBIS fastener customer, using
16 FACTS software."

17 Do you see that there?

18 A. I do.

19 Q. And you would agree with me that this is the first
15:59:29 20 time in history that LSi or IBIS communicated the actual
21 name Hodell in any sort of written communication to SAP?

22 A. I -- I can't say that definitively at all.

23 Q. You can't point --

24 A. I don't know.

15:59:44 25 Q. Isn't it true you're not aware of any written

1 communication of any type prior to this where the word
2 "Hodell" or the name Hodell was communicated to SAP?

3 A. Again, I cannot suggest that.

4 I would say that that is untrue in that
16:00:04 5 AmEx, if they registered the deal, Hodell-Natco's name
6 would have been on that and that was way earlier than
7 this.

8 Q. But you're not aware of IBIS/LSi communicating
9 anything about Hodell in writing prior to this day?

16:00:17 10 A. Again, I can't say.

11 Q. Okay.

12 A. I don't have --

13 Q. That's fine. It's hard to remember everything in
14 the universe. I mean, I get that.

15 I just want to know you're not aware of
16 anything ten years ago?

17 A. Ten years ago.

18 Q. And on the second page --

19 A. Ten years ago, yes.

16:00:30 20 Q. On the second page there's a reference to the
21 number of users, right?

22 A. Second page of --

23 Q. Second page of this.

24 A. Of 40?

16:00:45 25 Q. Yes, there should be a second page. It's a

1 spreadsheet. It's tiny.

2 A. Okay.

3 Q. Do you see it?

4 A. I do see it.

16:00:56 5 Q. Okay. And if you look at Line 7, it just says SAP
6 licenses, 80, correct?

7 A. That's correct.

8 Q. And just like Exhibit 71, this Exhibit 40 doesn't
9 contain any other references with respect to Hodell's
16:01:14 10 specifics other than a user reference, right?

11 A. I would have to say that's true.

12 Q. Okay. So look at 294. It's in your binder. 294,
13 sir, if you go to the back, starts out as a note from Dan
14 Lowery to Ralf Mehnert-Meland at SAP, right?

16:01:47 15 Do you see that there? All the way on the
16 last page.

17 A. Okay.

18 Q. And it says "You'll be receiving a call from Dale
19 Van Leeuwen this week to ask direction on SAP B1
16:02:03 20 performance issues."

21 Do you see that there?

22 A. Okay. Yeah.

23 Q. Then it goes on and on. And if you go ahead,
24 there's a quick thanks e-mail, but if you go to the
16:02:13 25 second page of this document at the bottom, you see

1 there's a Dale Van Leeuwen e-mail to Ralf Mehnert-Meland,
2 dated February 27th, '06?

3 Second page.

4 A. Okay.

16:02:26 5 Q. Okay. And then if you go to the next page, that's
6 the bulk of your e-mail to Ralf, the one that Lowery was
7 talking about was going to be coming, right?

8 A. That's correct.

9 Q. Okay. So then look at the highlighted part. You
16:02:40 10 report to Ralf Mehnert-Meland, "To assist you in
11 understanding the environment we are deploying in, I
12 provide the following:" And there's a number of hardware
13 references, and the last highlighted item says, "The
14 database has approximately 150,000 SKUs, 20,000
16:02:57 15 customers, 7500 vendors."

16 Do you see that there?

17 A. That was in my e-mail to Ralf.

18 Q. And that's my point. This is the first time in
19 history that you've communicated those transaction
16:03:10 20 specifics to SAP, isn't it right?

21 A. No.

22 Q. You can't point to another document in the universe
23 that communicates these specifics from IBIS/LSi to SAP
24 prior to this date, right?

16:03:22 25 A. That's because I don't have access to those

1 documents, that's correct.

2 Q. But we've been litigating this case --

3 A. I can't answer that.

4 Q. Let's talk about that. You were a Defendant in

16:03:31 5 this case, isn't that right, or IBIS was a Defendant in
6 this case, right?

7 A. I believe that is correct.

8 Q. Well --

9 A. LSi was.

16:03:41 10 Q. IBIS was actively defending this case for a period
11 of time, right?

12 A. Okay.

13 Q. And Hodell --

14 A. I was not engaged -- I was not engaged or involved
16:03:51 15 in that so I really -- I really can't speak to that.

16 Q. Well, you were one of the principals of IBIS,
17 correct?

18 A. I -- I was not involved at all in any of the
19 litigation or anything to do with IBIS after I departed
16:04:06 20 from the organization.

21 Q. You're aware that IBIS got sued by Hodell, right?

22 A. I was -- I was made aware of that, that is correct.

23 Q. Okay.

24 A. But I had no part in any of the discovery or
16:04:20 25 anything like that.

1 Q. Well, you participated in a deposition, correct?

2 We talked about that extensively, right?

3 A. Yes.

4 Q. Right?

16:04:27 5 A. Yes.

6 Q. And you're aware IBIS is no longer defending this
7 case, right?

8 A. I didn't know that until just now.

9 Q. Okay. Well, you were aware then that Hodell sued
16:04:36 10 IBIS, right?

11 A. That they were included in the lawsuit, that is
12 correct.

13 Q. Right. So you were adverse to Hodell and its
14 lawyers, right?

16:04:46 15 MR. LAMBERT: Objection, Your Honor.

16 THE COURT: Objection sustained.

17 A. I never had any contact with them at all.

18 Q. Isn't it true --

19 A. I had no contact.

16:04:53 20 Q. -- that you've had contact with Hodell's lawyers in
21 the last several months?

22 A. Just to -- just to testify.

23 Q. And you discussed with them the testimony that you
24 provided earlier today, isn't that true?

16:05:04 25 A. No.

1 Q. And you had a series of e-mails with them about
2 your testimony today, isn't that true?

3 A. No.

4 MR. LAMBERT: I'm going to object and ask
16:05:14 5 for the basis --

6 Q. I don't have time to --

7 A. Other than to ask me to testify, no.

8 Q. Let's go back to 294.

9 A. Okay.

16:05:34 10 Q. Actually, no, let's keep moving.

11 Let's talk about your role in the project,
12 something you wanted to talk about.

13 The project started after the development
14 agreement was signed, right? That was in December of
16:05:45 15 2004?

16 A. That's correct.

17 Q. Okay. I'm going to try and do some quick math. If
18 I told you that go-live was in March of 2007, would you
19 follow with me that that's 27 months, right? That's all
16:05:57 20 of -- all of 2005, all of 2006, plus three months in
21 2007, 27 months, okay?

22 A. Okay.

23 Q. Fair enough?

24 A. Yes.

16:06:10 25 Q. You again were originally understood to be the

1 captain of the ship, right?

2 A. That's correct. Yes.

3 Q. Okay. And I do understand and I'm glad that this
4 has turned out much better for you, but I understand for
16:06:24 5 a period of time after the acquisition by LSi of IBIS,
6 you were very sick?

7 A. Yes. In January of 2005 I was diagnosed with Stage
8 4 cancer.

9 Q. And I'm glad that you beat cancer, and that's
16:06:42 10 wonderful, but just to set the timeline for this jury,
11 January of '05 would have been right after the
12 development agreement got executed?

13 A. That's correct.

14 Q. And you were out after your diagnosis for, like, 11
16:06:56 15 months?

16 A. That is correct. Other than I was developing, I
17 was writing the development specs.

18 Q. Right. But you testified at your deposition that
19 you were basically down for 11 months, chemotherapy and
16:07:13 20 various other treatments, and you didn't come back until
21 the late fall, 2005, and even then it was in a very
22 limited capacity?

23 A. That's correct.

24 Q. Okay.

16:07:27 25 A. Yeah, I needed to rebuild my body. Absolutely.

1 Q. Thank you. And just a couple of months then after
2 you returned to the project in late 2005, you resigned
3 from IBIS/LSi, right?

4 A. I resigned in May of 2006.

16:07:45 5 Q. Right. So if you returned in late 2005, five
6 months later, you resigned?

7 A. That's correct.

8 Q. And the go-live originally on this project was
9 supposed to be something like mid 2006, right?

16:08:06 10 A. I -- I don't remember. I'd have to go back to
11 documents.

12 I don't remember.

13 Q. Well, let me ask you this: You would agree that at
14 the time you left, the development of the In-Flight
16:08:17 15 Enterprise was still very much a work in progress?

16 A. I would agree with that.

17 Q. And that only 40% of the In-Flight Enterprise was
18 actually completed at that point?

19 A. I don't know that I could give it a percentage.

16:08:35 20 I mean, I just -- I don't know what that
21 percentage would be.

22 Q. Would you agree with me that if we went back to
23 your deposition that at Page 254 you testified that 40%
24 of In-Flight Enterprise was completed when you left?

16:08:47 25 A. Okay. If I said that, that sounds accurate. Then,

1 yes.

2 Q. After you left, you don't have any personal
3 knowledge about B1 or Hodell because you were gone?

4 A. That's correct.

16:08:58 5 Q. Okay. And you don't have any knowledge of how B1
6 worked after go-live?

7 A. That is correct.

8 Q. And when you left in April of '06 or May of '06,
9 the problems to the extent they existed with the
16:09:13 10 solution, they were improving?

11 A. I'm sorry?

12 Q. They were improving?

13 A. I would -- the IBIS development team was doing all
14 that they could to increase performance. I know that SAP
16:09:28 15 was also working diligently on trying to improve the DI
16 API.

17 I don't know that the performance issues
18 were resolved at any level, but I know everybody
19 was -- had full effort on it.

16:09:44 20 Q. Very simple question. Didn't you testify that you
21 would describe the performance problems as being minor?

22 Actually let me just ask you this. Go to
23 Page 256, please. I think we can do this very quickly.
24 It's not a major point of contention.

16:09:58 25 At the bottom --

1 A. Okay.

2 Q. -- Line 23, Page 256.

3 A. Okay.

4 Q. "Question: Would you describe the performance
16:10:09 5 problems that you were having at the time you left as
6 being minor? Were they moderate? Were they severe?

7 "Answer: Oh, they were significant, but
8 again, with an ongoing communication with SAP and
9 assurances that releases and patches were -- we're seeing
16:10:24 10 significant improvement."

11 Do you see that there?

12 A. Yes.

13 Q. So when you left you were seeing significant
14 improvement?

16:10:30 15 A. Okay.

16 Q. I want to talk about these marketing materials from
17 SAP that you referenced.

18 A. Yes.

19 Q. Take a look at Exhibit 36. I'm going to try and
16:10:44 20 move through this quickly. You were shown a series of
21 marketing exhibits earlier today, right?

22 A. Yes.

23 Q. And one of them, it was Exhibits, I think, 35 and
24 36 and 38. Do those numbers sound kind of familiar?

16:11:04 25 A. I see -- yes. Yes.

1 Q. This is one of them anyway, right, 36?

2 A. Yes.

3 Q. Okay.

4 And if you look at that front page, you see

16:11:12 5 there's a reference there to whether you have five

6 employees or 500, right?

7 A. Yes.

8 Q. And your testimony today is that marketing

9 materials, like Exhibit 36 and the statement within those

16:11:27 10 marketing materials, were some of the things that

11 convinced you that SAP Business One was good for up to

12 300 or 400 or 500 users and that SAP was marketing to

13 that range, correct?

14 A. That was one of the components, yes.

16:11:39 15 Q. Got it. But you realize that these marketing

16 materials don't have a reference to users, correct?

17 A. They're employees, that is correct.

18 Q. Okay. Let's go on, and you also testified that

19 there were no alarms during the discovery period that B1

16:11:59 20 couldn't support Hodell's user count, right?

21 A. There were no alarms, that is correct.

22 Q. Okay. Take a look at Exhibit 130. Exhibit

23 130 -- well, go to the back of it first.

24 A. Okay.

16:12:30 25 Q. You see in the lower left-hand corner there's a

1 little piece of highlighting that says "SAP AG 2005"?

2 A. What -- I'm sorry. So which page are you on?

3 Q. All the way to the back.

4 A. All the way to the back.

16:12:46 5 Q. Got a funny-looking complicated slide that says
6 demonstration on it?

7 A. It's a graphic? Yes.

8 Q. Yeah, but if you look in the lower left-hand
9 corner, there's a copyright date.

16:12:57 10 Do you see it?

11 A. Okay. Yes.

12 Q. Testing your eyes?

13 A. 2005.

14 Q. Right. Exactly. And if you go back under the
16:13:04 15 front, you can see that this is a B1 presentation by Gadi
16 Shamia?

17 A. Okay.

18 Q. And I'll represent to you for the record that this
19 document was produced by LSi.

16:13:23 20 Fair enough?

21 Do you understand what I'm saying, that
22 this document was produced to us, to SAP during the
23 course of this litigation, by LSi?

24 Do you understand that?

16:13:33 25 MR. LAMBERT: I'll object, Your Honor.

1 A. Okay.

2 THE COURT: Overruled.

3 A. I mean, I don't know that.

4 Q. That's fine. I understand.

5 THE COURT: That is true, isn't it?

6 Q. But I'm representing to you that this came from

7 LSi --

8 THE COURT: Excuse me. Whoa. Whoa.

9 That is true, isn't it?

10 16:13:48 MR. LAMBERT: What?

11 THE COURT: That is true, that's where the
12 document came from?

13 MR. LAMBERT: Yes.

14 THE COURT: All right. Then why are we
15 16:13:54 fighting about it?

16 BY MR. MILLER:

17 Q. I'm just trying to make the point, Mr. Van Leeuwen,
18 that this came from LSi.

19 A. Okay.

20 16:14:00 Q. I want you to go to Page -- I guess it's Page 3.
21 It's got a little pyramid on it or big pyramid.

22 A. Page 3, got a pyramid. Okay.

23 Q. We see at the top it says, "SAP Business One is an
24 affordable integrated business management solution

25 16:14:20 designed specifically for small and mid size companies

1 ten to 100 employees."

2 You see that there, right? It's up top.

3 A. Yes. Yes.

4 Q. Okay. And if you go two pages further in, there's

16:14:35 5 a page that's got a title "Small business market."

6 Do you see that there?

7 A. Page 10?

8 Q. Yep. No. No. Two more pages in. Two more pages
9 past the pyramid.

16:14:49 10 A. Okay. Yes.

11 Q. Says, "Small businesses" and then parenthetically
12 "One to 100 employees," right?

13 A. Okay. Yes.

14 Q. And then it says -- and then it says Business One?

16:15:02 15 A. Yes. I see it. I see that on these documents.

16 Yes, that is true.

17 Q. You got to let me finish the question.

18 Then it says Business One Sweet Spot,

19 right?

16:15:10 20 A. Yes.

21 Q. Okay.

22 And again, if you were understanding that

23 Business One was actually being marketed for a range of

24 users in the 300 to 400 to 500 range --

16:15:24 25 A. Yep.

1 Q. -- this document, if you saw it before the B1 sale,
2 would have been a concern to you?

3 A. It would have, yes.

4 Q. And if this document was in LSi's files at the time
16:15:37 5 it was created in 2005, you would have had access to it,
6 correct?

7 A. I -- I don't know that.

8 Q. Well, you were the captain of the ship of this
9 project, right?

16:15:47 10 A. Okay. If it was in LSi's files, their headquarters
11 is down in St. Louis. I have no idea whether or not this
12 document was up in the Chicago office or even if I was
13 back from being sick when this document came out.

14 I have no idea.

16:16:01 15 Q. And your point is that LSi's offices are separate
16 from IBIS's offices, right? That's one of the points you
17 just made?

18 A. They are. Yes.

19 Q. IBIS's offices were in Illinois, right?

16:16:14 20 A. That is correct.

21 Q. And you worked out of IBIS's offices, right?

22 A. In 2005, I was pretty much working outside of the
23 office.

24 Q. Because of your illness?

16:16:25 25 A. Because of my illness and then that I was out in

1 the field.

2 Q. Okay. You do realize that if Hodell was aware
3 before the license agreement in December of '05 that B1
4 was marketed to companies like this up to a hundred
16:16:42 5 employees, it's your understanding from your interactions
6 with Hodell that they would not have gone through with
7 the deal?

8 A. I would say that that's true.

9 Q. And you're not aware of anyone at IBIS or LSi ever
16:16:53 10 discussing this document, Exhibit 130, with Hodell?

11 A. I am not.

12 Q. Take a look, please, at 123. Actually, you know
13 what? Skip that. Go to 294.

14 We looked at that earlier. This was the
16:17:17 15 document, sir, where you reported on February 27th, 2006,
16 the Hodell transaction volumes, correct, you reported
17 those to SAP?

18 A. Yes.

19 Q. Right?

16:17:31 20 And if you go to the front, you see a
21 response from SAP, right? It's just a couple days later?

22 It's highlighted on the very front. It's
23 March 1st, 2006. It's from Eddy Neveux to Ralf Mehnert,
24 copy to you.

16:17:51 25 A. Okay. Yes.

1 Q. And that's you right below the "to," line, right?
2 It says "MDVL," that's "@fastener-software.com," that's
3 you, right?

4 A. Correct.

16:18:02 5 Q. And he reports to you, "Dale, SAP is looking into
6 this issue. We've had some reports of issues in
7 performance with large data sets in the SAP Business One
8 product."

9 You see that there, right?

16:18:14 10 A. Yes.

11 Q. So within three days of you giving the transaction
12 volumes to SAP on February 27th, '06, they write back to
13 you and make this statement, correct?

14 A. Yes.

16:18:23 15 Q. And you never passed this statement on to Hodell?

16 A. That's because they were looking into the issue.
17 They said they were looking into the issue. I didn't
18 have a definitive answer.

19 Q. And it continues "Development is aware of this
16:18:38 20 issue and we are waiting to hear back on what is to be
21 done to resolve the issue. The bad news is that we do
22 not have a time frame as to when these issues will be
23 resolved."

24 Do you see that there?

16:18:48 25 A. Yes.

1 Q. And you never reported any of this to Hodell,
2 correct?

3 A. That's correct.

4 Q. Okay. Look at 121. You were asked about these
16:19:07 5 notes in your deposition. They're dated March 16th,
6 2006?

7 A. Okay. Yep.

8 Q. Take a look at this report on the third page under
9 7.

16:19:40 10 A. Okay.

11 Q. You would agree that this reports, if you look at
12 the second paragraph, about a conference call that was
13 taken with SAP on March 15th, 2006, correct?

14 A. I don't know what generated this report at all. I
16:20:01 15 don't know.

16 Q. You testified at your -- and forgive me. I realize
17 it's been a long time, but you testified at your
18 deposition that you've seen these notes before, correct?

19 Well, you've seen these notes before,
16:20:15 20 right?

21 A. I'd have to go back and revisit them.

22 Q. Do you remember a conference call with SAP on March
23 15th, 2006 about some response issues? It's kind of
24 referenced in this Paragraph 7.

16:20:55 25 A. Okay. Yes.

1 Q. Okay. Thank you. And you would agree, this is SAP
2 telling you that Business One was never tested at
3 Hodell's transaction volumes?

4 You see the third paragraph, it says, "SAP
16:21:10 5 has satisfactory testing results using a test environment
6 of 16,000 BPs, 60,000 SKUs, 30 users and ten warehouses."

7 Do you see that there?

8 A. Okay. That just tells me that they're successful
9 at that level. It doesn't tell me they were unsuccessful
16:21:27 10 at a higher level.

11 Q. Okay. But you're aware from reading that, those
12 numbers are lower than Hodell's volumes, correct?

13 A. That is correct.

14 Q. And that would have concerned you at the time? In
16:21:36 15 fact you testified at your deposition that that concerned
16 you because SAP was reporting on testing, but the
17 reports -- the testing that SAP had done had been on
18 volumes that were much lower than Hodell?

19 A. That is correct, but I --

16:21:51 20 Q. Okay. And also --

21 A. I also had to rely on the second paragraph which
22 says that they were working on the solution.

23 Q. Okay. And then, therefore, you decided I'm not
24 telling Hodell about this because you never did tell
16:22:03 25 Hodell about this, right?

1 A. I would say that that is accurate. We were -- we
2 were working on our development effort. SAP was working
3 on performance.

4 Q. Okay. And you also agreed that Hodell, you also
16:22:20 5 agree that IBIS/LSi agreed that they would test the
6 system? Look at the paragraph below.

7 A. I would say that that's probably true, yes.

8 Q. Let's go quickly through this. The last paragraph
9 below the three highlighted ones, "IBIS/LSi will be
16:22:40 10 working closely with SAP, et cetera, et cetera." Next
11 sentence, "At present, we are planning to stage a similar
12 test environment in the near future at Hodell-Natco with
13 the actual configuration that's in place for this
14 system."

16:22:51 15 Right?

16 A. Correct.

17 Q. So you're agreeing to test?

18 A. Yes.

19 Q. Okay. And if you go, take a look very quickly at
16:23:01 20 889.

21 A. 889?

22 Q. It's towards the back. It's the last exhibit.

23 A FEMALE SPEAKER: 889 or 898?

24 Q. You know what, I'm going to skip this. Let's keep
16:23:21 25 moving because I know we're getting short on time.

1 You never -- leaving the exhibits aside,
2 you never forwarded to SAP the results of the tests that
3 were conducted after the March 15th, 2006 conference
4 call, right?

16:23:37 5 A. I -- I did not personally, no.

6 Q. Because you left right after that; you were gone by
7 May, '06?

8 A. That is correct.

9 Q. Okay. And you're not a programmer, right?

16:23:49 10 A. I can program in certain languages. Not in SQL or
11 the language that Business One was in.

12 Q. Here, let's be clear. You've never written one
13 line of code for B1?

14 A. Personally, no. That is correct.

16:24:03 15 Q. And you did not write the IFE code here either, did
16 you?

17 A. That is correct.

18 Q. And you testified at your deposition that you're
19 not qualified to analyze code, isn't that right?

16:24:17 20 A. That is correct.

21 Q. And you made a reference earlier in your testimony
22 that DI API, remember that?

23 A. Yes.

24 Q. And you talked about it, it's a pipe, right?

16:24:25 25 A. That's correct.

1 Q. But, really, that's metaphorical. You're talking
2 about code, right?

3 A. Nope. I'm not. I'm talking about data.

16:24:36

4 Q. The pipe itself is not the data. The pipe is what
5 the data transmits through, correct?

6 A. Data passes through the pipe.

7 Q. Correct. And the pipe is created by writing code?

8 A. The pipe was developed by SAP as part of the SDK.

16:24:52

9 Q. Are you suggesting that the pipe is a piece of
10 pipe, or are you suggesting that the pipe is --

11 A. No.

12 Q. Excuse me. Or are you suggesting that the pipe is
13 constructed by writing software code?

16:25:14

14 A. SAP wrote software code and API to communicate data
15 between itself and Business One.

16 Q. And that code that SAP wrote, that's the pipe?

17 A. That's what we're referring to as a pipe. That is
18 correct.

16:25:26

19 Q. Okay. And you're not qualified to analyze that
20 code, that pipe, because it's code, right?

21 A. That is correct.

22 Q. Thank you. SAP, you testified already you think
23 SAP's an honest company, right?

24 A. Yes.

16:25:40

25 Q. And you testified --

1 A. I do.

2 Q. -- and you'd agree now and you would tell the jury,
3 everybody, including SAP on this project, expected it to
4 be a success?

16:25:52 5 A. When it was sold, absolutely.

6 Q. Thank you.

7 A. Yes.

8 Q. You talked about the Sweet Spot, remember that in
9 your direct testimony?

16:26:06 10 A. Okay.

11 Q. That's a marketing term, right?

12 A. Yes.

13 Q. Not a software term?

14 A. Correct.

16:26:14 15 Q. And you testified about Exhibit 178. Remember 178?
16 You have to look at the binder that you got from Hodell.

17 A. I got it.

18 Q. This is the one that was not directed to you but it
19 had kind of a couple of pages of attachments and kind of
16:26:37 20 like a chart format?

21 A. Yes.

22 Q. These are promotional materials, right?

23 A. That is correct. This was reported to SAP.

24 Q. Right. These were prepared after the Hodell sale,
16:26:50 25 right?

1 A. That's correct.

2 Q. And they were communicating to others things about
3 this Hodell sale, correct?

4 A. That's correct.

16:27:01 5 Q. And the only thing that they referenced was the 120
6 users, correct? They didn't reference the 300 or 400 or
7 500 users that you talked about today at various points,
8 right?

9 A. That is correct.

16:27:18 10 MR. MILLER: Just one moment, Your Honor.

11 (Pause).

12 Forgive me, Your Honor. I'm just trying
13 to --

14 THE COURT: That's all right.

16:28:10 15 MR. MILLER: -- move through this.

16 THE WITNESS: Three minutes and I'm done.

17 MR. MILLER: Your Honor, I have no further
18 questions.

19 THE COURT: Thank you.

16:28:48 20 Any redirect?

21 MR. MILLER: I had more questions, but I
22 mean, I'm --

23 THE COURT: You're out of time.

24 MR. MILLER: Pretty much.

16:29:02 25 THE COURT: Okay.

1 MR. MILLER: I mean, I have more questions
2 right in front of me. I'm just cutting things short.

3 THE COURT: That's all right because you
4 got about one minute to go.

16:29:11 5 MR. MILLER: All right. I'll ask a quick
6 question.

7 BY MR. MILLER:

8 Q. You testified, sir, that prior to the sale, that
9 there was a discovery process.

16:29:23 10 Do you remember that?

11 A. Yes.

12 Q. And it would be during the discovery process that
13 you would collect the customer's requirements and
14 specifics. Here that would be Hodell?

16:29:36 15 A. That is -- that is a traditional discovery, right,
16 where you go in and you do that discovery.

17 Q. And you would agree that the details you collected
18 during this discovery process about Hodell, you didn't
19 pass those on to SAP because there was no need to drill
16:29:52 20 down like that?

21 A. At the point where I was communicating with SAP
22 about the sale itself, there were points where we didn't
23 disclose the name because it was an opportunity. We
24 hadn't solidified certain aspects of the relationship.

16:30:15 25 Ultimately as soon as that was done, it was communicated

1 to them it was Hodell.

2 And as we moved forward through the sales
3 process, SAP was fully aware of Hodell-Natco's working
4 environment.

16:30:28 5 Q. You say that now, but when you had your deposition
6 taken, you testified differently, didn't you? And it was
7 that the details collected were not passed along, and in
8 part because there was no need to drill down.

9 Right?

16:30:49 10 A. Again, initially they were not. They were
11 ultimately -- all of the detail, I mean that's shown in
12 all these documents we're sharing information as -- as it
13 was appropriate with SAP.

14 Q. Well, the first document --

16:31:01 15 THE COURT: Again, this is your last
16 question.

17 MR. MILLER: Thank you.

18 BY MR. MILLER:

19 Q. The first document, the only document, that you can
16:31:08 20 refer to where the details of Hodell's specifics and
21 their transaction volumes was communicated to SAP was
22 Exhibit 294, and Exhibit 294 was after the license
23 agreement sale because 294 was dated February 27th, 2006.

24 Isn't that right, yes or no?

16:31:28 25 A. That's the only -- that's the only document that

1 I've seen in all this.

2 Q. Thank you.

3 A. There were conversations that were had, absolutely.

4 MR. MILLER: Your Honor.

16:31:37 5 THE COURT: Thank you.

6 MR. MILLER: Thank you very much. I think
7 we've heard about all your supposed conversations.

8 MR. LAMBERT: We move to strike that.

9 THE COURT: You can.

16:31:48 10 MR. MILLER: Thank you, Your Honor.

11 THE COURT: Okay, folks, that will conclude
12 our testimony for today.

13 Thank you so much for your patience.

14 See you bright and early. We'll start at
16:31:55 15 the normal time. Meet at 8:15 where, Mr. Panigutti?

16 A JUROR: L-1.

17 THE COURT: Okay. We'll see you then.

18 Keep in mind the admonitions.

19 (Jury out)

16:32:12 20 (Proceedings adjourned at 4:32 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/Susan Trischan

/S/ Susan Trischan, Official Court Reporter
Certified Realtime Reporter

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I N D E X

WITNESSES:

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BY MR. LAMBERT

CROSS-EXAMINATION OF DALE VAN LEEUWEN

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BY MR. MILLER

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